Supplemental Testimony for the Los Esteros Critical Energy Facility Application for Certification 01-AFC-12

Air Quality, Biological, Noise, Public Health, Traffic and Transportation, Transmission System Engineering and Visual Resources

Submitted to the

California Energy Commission

May 10, 2002

Submitted by Calpine C* Power

CH2MHIII

2485 Natomas Park Drive, Suite 600 Sacramento, California 95834

Contents

	Page
CONTENTS	I
AIR QUALITY SUPPLEMENTAL TESTIMONY	1
BIOLOGICAL RESOURCES SUPPLEMENTAL TESTIMONY	6
NOISE SUPPLEMENTAL TESTIMONY	14
PUBLIC HEALTH SUPPLEMENTAL TESTIMONY	17
TRAFFIC AND TRANSPORTATION SUPPLEMENTAL TESTIMONY	20
TRANSMISSION SYSTEM ENGINEERING SUPPLEMENTAL TESTIMONY	23
VISUAL RESOURCES SUPPLEMENTAL TESTIMONY	26

SUPPLEMENTAL LECEF TESTIMONY

Air Quality Supplemental Testimony

I. INTRODUCTION

- A. Name: Gary Rubenstein
- **B. Purpose:** This testimony addresses the air quality issues associated with the compressed construction schedule for the project. Although this issue was qualitatively addressed in my original testimony in this case, the Committee has asked for further analysis on this topic.
- **C. Qualifications:** My qualifications were provided with my original testimony in this case.
- **D. Prior Filings:** Prior filings were addressed in my original testimony in this case.

II. PROPOSED LICENSING CONDITIONS

The Applicant believes that the construction mitigation requirements proposed by the Commission staff remain adequate, even with the compressed construction schedule.

III. SUMMARY

In the Committee's order reopening the record dated April 25, 2002, the Committee requested that each party provide supplemental testimony regarding the construction impacts associated with a 24-hour construction schedule. This supplemental testimony has been prepared to address that request.

This issue was addressed in a qualitative way in my testimony presented at the March 11, 2002 hearing. My prefiled testimony addressed this issue as follows:

"It is my understanding that an issue has been raised as to whether our modeled air quality impacts during construction would be accurate if the project's construction schedule were compressed to a four-month duration, working three shifts per day, instead of twelve months. If such a compression of the construction schedule were to occur, it would likely significantly affect only our calculation of worst-case 24-hour average sulfur dioxide and PM₁₀ concentrations. This is because our calculations of worst 1-hour, 3-hour and 8-hour average impacts would not be significantly changed, as there would be no change to the short-term emission rates that we assumed. Furthermore, there would likely be no significant change to the annual average concentrations, as the annual average emission rates would not be changed. The worst

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case 24-hour average concentrations would likely be three times higher than those we analyzed. There are only two pollutants for which a 24-hour average concentration is determined – sulfur dioxide and PM_{10} . A tripling of the 24-hour average sulfur dioxide concentrations would leave this insignificant impact insignificant. A tripling of the 24-hour average PM_{10} concentration, from $13.2\,\mu\text{g/m}^3$ to $39.6\,\mu\text{g/m}^3$ would still indicate that the project would not cause a violation of the state or federal air quality standards, but would still contribute to existing violations. This conclusion is the same conclusion as has been reached for the construction impacts of all of the CEC projects with which I am familiar; consequently, I believe that the CEC staff's standard mitigation requirements for the PM_{10} impacts associated with construction will reduce these impacts to a less-than-significant level, even with a 24-hour construction schedule that is compressed to a three-month period." 1

During my cross-examination by Mr. Freedman at the March 11 hearing, I further indicated why I believed that the use of a 24-hour construction schedule would not change my conclusions regarding the significance of air quality impacts.

The state ambient air quality standard for particulate matter is violated regularly in every county in California except for Lake County. Consequently, any activity that results in an increase in PM10 emissions anywhere in the state is going to contribute to preexisting violations. And the point of that comment I made is that that was true for our analysis based on the assumption that construction occurred using one shift per day, and that would remain true if construction, in fact, proceeded with three shifts per day.²

However, to address the concerns raised by the Committee in its order reopening the record of this proceeding, I have performed a more detailed air quality impact analysis that reflects an accelerated construction schedule. For the purpose of this analysis, I have assumed that during the months of June through September, construction equipment is operating during 20 hours each day, but that this operation can occur at any time during a 24-hour period. The basis for this assumption is the description of how a 24-hour construction schedule would be implemented that was provided to me by the Applicant. If there is to be a 24-hour construction period, my understanding is that is will occur during the initial construction phases, and will last only approximately two months; to be conservative, we have assumed that this portion of the accelerated schedule would last four months - June through September. For

¹ Exhibit 4B, Testimony of Gary Rubenstein, pp. 10-11

² 3/11/02 RT 155:10-23

the remaining months of the year, we assumed that the construction would occur during up to 21 calendar hours (excluding only the period 1 am through 4 am), and that equipment operations during those calendar hours would occur for 16 hours.

The following table summarizes the results of an air quality dispersion modeling analysis based on an accelerated construction schedule, and compares these impacts with those presented in the AFC.³

Table 8.1D-3 Modeled Maximum Onsite Construction Impacts (revised)

		Ma	ximum	_	•	•		
	Construction		-	Γotal				
		In	npacts		Iı	npact		
		(μ	g/m³)		(μ	g/m^3)	State	Federal
Pollutant	Averaging Time	Original (1 shift)	Revised (accelerated)	Background (μg/m³)	Original (1 shift)	Revised (accelerated)	Standard (µg/m³)	Standard $(\mu g/m^3)$
NO_2 1	1-hour	228.4	229.1	241	469*	470	470	
	Annual	1.1	2.8	49	50	52		100
SO_2	1-hour	7.1	7.1	94	101	101	650	
	24-hour	0.8	1.8	18.4	19	20	109	365
	Annual	0.04	0.11	5.3	5	5		80
CO	1-hour	61.1	61.2	12,375	12,436	12,436	23,000	40,000
	8-hour	17.7	42.1	6,978	6,996	7,068	10,000	10,000
PM_{10}	24-hour	13.2	37.0	114	127	151	50	150
	Annual ²	1.9	7.2	25.4	27	33	30	
	Annual ³	1.9	7.2	28.7	31	36		50

Notes: 1. Ozone limiting method applied for 1-hour average, using concurrent O₃ data (1997 to 1999). ARM applied for annual average, using national default 0.75 ratio.

- 2. Annual Geometric Mean.
- 3. Annual Arithmetic Mean.
- * AFC value was erroneously shown as 467 µg/m³

With the exception of the 24-hour and annual average PM_{10} impacts, the values shown above are not significantly different from those presented in the AFC. The PM_{10} values are higher because the principal source of PM_{10} emissions is fugitive dust, and fugitive dust impacts are generally over-estimated by regulatory dispersion models. The increase in comparison with the AFC results is due to the assumed generation of dust during night-time hours when dispersion is generally poorer. The CEC's standard mitigation measures are expected to ensure that no significant dust impacts occur even under a 24-hour construction schedule. These standard mitigation measures, which are included as staff proposed condition AQ-SC1, include the preparation of a dust

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³ Exhibit 2A, AFC, Appendix 8.1D

mitigation plan which includes the following elements, in addition to standard dust control measures such as good watering practices:

- The identification of the employee parking area(s) and the surface composition of those parking area(s);
- The frequency of watering of unpaved roads and disturbed areas;
- The application of chemical dust suppressants;
- The use of gravel in high traffic areas;
- The use of paved access aprons;
- The use of posted speed limit signs;
- The use of wheel washing areas prior to large trucks leaving the project site;
- The methods that will be used to clean up mud and dirt that has been tracked-out from the project site onto public roads;
- The use of windbreaks at appropriate locations;
- The suspension of all earth moving activities under windy conditions; and
- The use of on-site monitoring devices.

The other aspect of construction impacts that was re-analyzed based on a 24-hour average schedule is the health risk associated with Diesel exhaust particulate matter. The analysis presented in the AFC concluded that Diesel exhaust particulate matter would reach a maximum concentration, at any location, of $0.073~\mu g/m^3$, with an associated health risk of 0.3 in one million. Based on an accelerated construction schedule, the maximum Diesel exhaust particulate matter concentration increases to $0.189~\mu g/m^3$, with an associated health risk of 0.8 in one million. Both the original and the revised levels are well below the 10 in one million level considered to be significant.

Conclusion

With the implementation of the CEC staff's standard construction mitigation measures (AQ-SC1 through AQ-SC-3), and based on the above analyses, I believe that the air quality impacts associated with an accelerated construction schedule will comply with all applicable federal, state and local laws, ordinances, regulations and standards, and remaining potential impacts, if any, will be mitigated to a level that is less than significant.

DECLARATION OF

Gary Rubenstein

I, Gary Rubenstein, declare as follows:

- 1. I am presently employed by Sierra Research as a Senior Partner.
- 2. A copy of my professional qualifications and experience was presented in my previously filed testimony and is incorporated by reference herein.
- 3. I prepared the attached supplemental testimony on Air Quality for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated	1: 4/3./02	Signed:	Com	Rulumb
			•)
At:	Sacramento, California			

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Biological Resources Supplemental Testimony

I. INTRODUCTION

- A. Name: EJ Koford and John Reese
- **B. Purpose:** This testimony addresses the Biological Resource issues associated with the permitting of the storm water outfall for the project.
- C. Qualifications: EJ Koford Mr. Koford's qualifications were provided with the original biological resources testimony in this case and are incorporated by reference herein.

John Reese - Mr. Reese has a BS in Civil Engineering and an MEng in Structural Engineering and is a licensed engineer with over 31 years of civil/structural engineering experience. A resume is attached presenting Mr. Reese's qualifications.

D. Prior Filings: Prior filings were addressed in my original testimony in this case.

II. PROPOSED LICENSING CONDITIONS

The Applicant believes that the biological resource mitigation requirements proposed by the Commission staff in the Staff Assessment and Supplement remain applicable.

III. SUMMARY

Background

The Commission expressed concern with the lack of evidence in the record to demonstrate that the Applicant would be able to receive the necessary permits for the storm water outfall from the Santa Clara Valley Water District (SCVWD) and, if necessary, from the California Department of Fish and Game (CDFG) and the United States Corps of Engineers (USACE).

The Applicant has met with the SCVWD to finalize the storm water outfall design. Based on these meetings, the SCVWD has directed the Applicant to revise the storm water location and directed the Applicant to abandon the plans for constructing a storm water outfall near the Ordinary High Water Mark (OHWM) in the Coyote Creek channel. The preferred plan is to use an existing outfall in the high flow channel, which is similar to the approach suggested in the original LECEF design.

The SCVWD's preferred approach is expressed in a SCVWD letter, dated April 22, to the Commission Staff's project manager. A copy of this letter is attached

(as Attachment BIO-1) to this testimony for incorporation into the evidentiary record. The SCVWD's stated reason for preferring this approach was to minimize construction activities and therefore mitigate potential adverse impacts to Coyote Creek.

To satisfy the Commission's need for evidence of the storm water outfall permitting effort, the Applicant presented the SCVWD with a revised storm water outfall design based on the use of the existing storm water outfall located in the high flow channel at a May 1, 2002 meeting. The Applicant received the SCVWD's comments on this revised outfall design and submitted the final design drawings necessary for the SCVWD to issue a construction permit on 7 May 2002. The SCVWD's letter of April 22nd included a schedule for the issuance of the permit and stipulated that if the Applicant issues a design plan for the outfall by May 10th, then the SCVWD can issue a permit by May 31, 2002. Attachment BIO-2 contains a copy of the Applicant's permit submitted to the SCVWD on 7 May 2002.

Furthermore, the Applicant has submitted the revised outfall design drawings to the CDFG as an amendment to the Section 1600 permit determination formally submitted on February 1, 2002, and is awaiting a response from the CDFG. The Applicant fully expects the CDFG will not require the issuance of a Section 1600 permit for the revised storm water outfall. The USACE has determined that the elevation of jurisdiction of the outfall is approximately 10 feet mean sea elevation and any work above this elevation is not subject to USACE jurisdiction. The outfall being permitted by the SCVWD is located at an elevation above 19 feet MSEL .

Consistency with LORS

The revised storm water outfall design is not expected to require a CDFG Section 1600 permit, nor are any permits expected to be required by the USACE. Therefore, the biological resources LORS consistency analysis presented in the LECEF Application for Certification and the Commission's Staff Assessment and Supplement continues to be applicable.

Conclusion

The Applicant has worked closely with the SCVWD, and has consulted with the CDFG and the USACE to facilitate the issuance of the necessary permits for the construction and operation of the storm water outfall. Based on the permit issuance schedule provided by the SCVWD and the Applicant's expectation that the only permit required is from the SCVWD, all necessary permits will be issued before the Commission issues its final decision on the LECEF project.

DECLARATION OF

EJ Koford

I, EJ Koford, declare as follows:

- 1. I am presently employed by CH2M HILL Incorporated as a Senior Biologist.
- 2. A copy of my professional qualifications and experience presented in my previously filed testimony and incorporated by reference herein.
- I prepared the attached supplemental testimony on Biological Resources for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: 5/8/6_	Signed:
At: Sacramento, CA	

DECLARATION OF

John N. Reese

I, John N. Reese, declare as follows:

- I am presently employed by CH2M HILL Incorporated as a Senior Project Manager.
- 2. A copy of my professional qualifications and experience is attached hereto and incorporated by reference herein.
- 3. I prepared the attached supplemental testimony on Biological Resources for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated	1: 9 May 2002	Signed:
At:	San Jose, CA	

JOHN N. REESE

Senior Program Manager

Education

M.E., Structural Engineering, University of California, Berkeley, CA, 1977 B.S., Civil Engineering, U.S. Military Academy, West Point, NY, 1970

Professional Registrations

Professional Engineer: Virginia

Distinguishing Qualifications

- Proven ability to manage complex engineer programs in the private and public sectors
- Extensive experience with US Army Corps of Engineers Civil Works and environmental restoration programs
- ♦ While District Engineer for the Sacramento District, he oversaw extensive Water Resource studies and designs focused on increasing levels of flood protection and improving navigation functions within a geographic responsibility in excess of 300,000 square miles
- Experienced in direct interaction with elected officials and federal and local agencies concerning complex and politically sensitive issues; coordinated with over 40 Members of Congress and state and local officials in eight Western states from Colorado to California, including the California Congressional delegation in Northern CA and the Bay Area

Relevant Experience

- Directed execution of the Corps' flood control program including enhancement of flood protection for the cities of Sacramento, Napa, and San Jose; presided over multi-agency and local/state political discussions leading to engineering solutions that balanced restoration and flood issues for the Napa, lower Guadalupe, Coyote Creek, and Sacramento Rivers
- Worked with federal and state agencies for the Florida Everglades Restoration program; directed engineering and planning tasks for USACE focused on providing surface and ground water hydrologic and modeling services in support of flood control and environmental restoration efforts
- Directed the remediation for closure and reuse of the Presidio of San Francisco; coordinated with state and local agencies to deal with soil and ground water contamination with serious potential hydrological impact to the quality of the San Francisco Bay
- Directed the fast track remediation for closure/reuse of Hamilton Field (Marin County);
 responsible for site investigation and remedial design and actions to meet Federal, State,

and Bay Area regulator requirements; developed strategies to meet rigorous criteria in tidal areas adjacent to the San Francisco Bay

• Engineering Manager for a \$25 million Design-Build project for a reclaimed water pipeline to provide cooling water to a 650 megawatt power plant in San Jose

Employment History

- CH2MHILL, Jacksonville, FL and San Jose, CA, Senior Program Manager, December 1998 Present
- CSX Transportation, Jacksonville, FL, Vice President Engineering, August 1996-October 1998
- U.S. Army Corps of Engineers, Sacramento, CA, Commander and District Engineer, July 1993-August 1996
- Headquarters, U.S. Army Japan, Camp Zama, Japan, Command Engineer, July 1991-June 1993
- U.S. Army Corps of Engineers, Various locations, U.S. Army Engineer Officer, 1991-Prior

Attachment 1



May 7, 2002

171228.OF.10

Mr. Luis Jaimes Santa Clara Valley Water District 5750 Almaden Expressway San Jose, CA 95118-3614

Subject: Coyote Creek - LECEF Outfall

Dear Luis:

Thank you for your quick initial review of the revised design of the outfall to Coyote Creek from the Los Esteros Critical Energy Facility (LECEF). In response to that review, enclosed for your use are two revised sets of plans for the construction of a storm drainage outfall. These plans incorporate a "tee" to provide access for the installation of an irrigation pipe should the Cilker property need to draw water from Coyote Creek during periods when the storm drain outfall is not in use. The plans also include a HDPE pipe insert within the existing CMP outfall pipe. This insert was added to address your concern over possible leakage of the CMP.

CH2M HILL

Suite 300 San Jose, CA

95112-4524
Tel 408.436.4909
Fax 408.436.4829

1737 North First Street

As requested in our May 2, 2002 submittal to you, please issue a permit for the construction of this outfall. As you know time is critical on this project. Therefore, we look forward to receiving the permit by May 24, 2002. Please contact me should you have any questions regarding this request.

Sincerely,

CH2M HILL

Vice President

Enclosure

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James Fiedler/SCVWD
Sue Tippets/SCVWD
Todd Stewart/Calpine
Chuck Vosicka/Calpine (with plan)
EJ Koford/SAC (with plan)

Attachment 2



5750 ALMADEN EXPWY SAN JOSE, CA 95118-3614 TELEPHONE (408) 265-2600 FACSIMILE (408) 266-0271 www.scvwd.dst.ca.us AN EQUAL OPPORTUNITY EMPLOYER

April 22, 2002

Mr. Robert Worl Project Manager California Energy Commission 1516 Ninth Street, MS40 Sacramento, CA 95814-5504

Dear Mr. Worl:

Subject:

Los Esteros Critical Energy Facility Storm Water Outfall; Intent to Permit Outfall in

High Flow Channel of Coyote Creek

Santa Clara Valley Water District (District) staff met with representatives of Calpine C*Power (Calpine) on April 18, 2002, to discuss their intent to discharge storm water drainage to Coyote Creek. We understand that the California Energy Commission (CEC) is in the process of preparing a Presiding Member's Proposed Decision for the Los Esteros Critical Energy Facility (LECEF) proposed by Calpine. Calpine has proposed a storm water outfall to drain the facility that would discharge to Coyote Creek, which is within District property and jurisdictional authority.

We understand from our discussions with representatives of Calpine and their outfall design team from CH2M HILL, that the CEC is licensing a 180-MW simple cycle power plant. The duration of the LECEF license would be limited to 3 years unless the LECEF is successfully relicensed through the CEC as a combined cycle power plant. If the combined cycle plant is not licensed and constructed, the simple cycle facility would not be permitted to operate beyond 3 years from the date of the initial license. In this case, the facility would need to be completely dismantled, including facilities, such as the storm water outfall, associated exclusively with the facility.

With that understanding, the District would like to minimize construction activities in the Coyote Creek channel until it is clear that the LECEF will be in operation for more than 3 years. Therefore, the District will work with Calpine to facilitate their accelerated construction schedule and issue a Construction/Encroachment Permit for a storm water discharge outfall within the high flow channel for a limited term. This permit will allow discharge of storm water flows associated with the LECEF to the Coyote Creek high flow channel for a period of up to 3 years, coinciding with the CEC license for the simple cycle portion of the facility. The location for this outfall is the high flow channel, which is just west of the low flow main channel.

This permitting intent presumes the completion of appropriate permit documents, including design plans for the outfall in late April, with finalization of a design documents acceptable to the District by about May 10, 2002. If complete plans are received by the District on or about May 10, it is our



expectation that the permit could be completed by May 31, 2002. Should you have any further questions, please contact Mr. Luis Jaimes of my staff at (408) 265-2607, extension 2576, or me at extension 2253.

Sincerely,

Due a Typets
Sue A. Tippets

Engineering Unit Manager

Community projects Review Unit

cc:

Mr. Todd Stewart Calpine C*Power 4160 Dublin Boulevard Dublin, CA 94560 Mr. John Reese CH2M Hill 1737 North First Street, Suite 300 San Jose, CA 95112

LOS ESTEROS CRITICAL ENERGY FACILITY STORM DRAINAGE OUTFALL

San Jose, California

CONSTRUCTION NOTES

- 1. ALL WORK TO BE IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS, STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION (CALTRANS), DATED JULY 1999, EXCEPT FOR ROCK SIZE AND CAPACITY, AND AS MODIFIED HEREON. CONVERT ALL MEASUREMENTS TO ENGLISH UNITS.
- 2. IT IS MANDATORY THAT THE SCWWD (DISTRICT) INSPECTOR BE NOTIFIED AT LEAST 48 HOURS PRIOR TO THE COMMENCEMENT OF CONSTRUCTION. COMPLETE REMOVAL OF PORTIONS OF THE WORK INSTALLED WITHOUT INSPECTION MAY BE REQUIRED IF THIS REQUIREMENT IS NOT MET.
- 3. ALL WORK TO FURNISH AND PLACE ROCK SLOPE PROTECTION INCLUDING CONCRETE GROUTING SHALL BE IN ACCORDANCE WITH THE CALTRANS STANDARD SPECIFICATIONS SECTION 72. NO WHITE ROCK MAY BE USED. METHOD B PLACEMENT SHALL BE USED.
- 4. ALL BACKFILL WITHIN DISTRICT RIGHT OF WAY SHALL BE WITH SUITABLE MATERIAL FROM EXCAVATION AND SHALL BE COMPACTED TO 90 PERCENT RELATIVE COMPACTION IN ACCORDANCE WITH CALIFORNIA TEST METHOD #216.
- CARRY ROCK RIPRAP TO MINIMUM 2 FEET ABOVE TOP OF CMP, UNLESS OTHERWISE
- CONTRACTOR SHALL VERIFY WORK IN FIELD AND SHALL SATISFY HIMSELF AS TO THE ACCURACY BETWEEN WORK SET FORTH ON THESE PLANS AND THE WORK REQUIRED IN THE FIELD. ANY DISCREPANCIES SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER
- THE ENGINEER WILL NOT DIRECTLY CONTROL THE PHYSICAL ACTIVITIES OF THE CONTRACTOR OR ANY SUBCONTACTORS. CONTRACTORS WILL BE SOLELY AND COMPLETELY RESPONSIBLE FOR WORKING CONDITIONS ON THE JOB SITE, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY DURING PERFORMANCE OF WORK. THIS REQUIREMENT WILL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.
- ANY EXCESS SOIL FROM EXCAVATION SHALL BE DEPOSITED OFF OF DISTRICT RIGHT OF WALL UNLESS APPROVED BY THE DISTRICT'S INSPECTOR.
- AGGREGATE BASE SHALL BE CLASS 2 AND SHALL COMPLY WITH THE PROVISIONS OF SECTION 26 OF CALTRANS STANDARD SPECIFICATIONS.
- 10. PORTLAND CEMENT CONCRETE (PCC) PAVEMENT SHALL COMPLY WITH THE PROVISIONS OF SECTION 40 OF CALTRANS STANDARD SPECIFICATIONS.
- 11. DUCTILE IRON PIPE (DIP) SHALL CONFORM TO THE REQUIREMENTS OF AWWA STANDARDS C151. THE THICKNESS CLASS SHALL BE FOR A RATED WORKING PRESSURE OF 150 PSI AND A DEPTH OF COVER OF 10 FEET. JOINTS SHALL BE FLANGED JOINTS CONFORMING TO AWWA
- 12. GEOTEXTILE FABRIC SHALL BE MIRAFI 700X OR EQUAL PER CALTRANS SPECIFICATIONS
- 13. CONCRETE COLLAR SHALL BE CONSTRUCTED WHERE THE TRANSITION BETWEEN DIP AND CMP IS IN A STRAIGHT LINE.
- 14. THE CONTRACTOR SHALL COMPLY WITH THE RULES AND REGULATIONS OF "CAL OSHA" CALIFORNIA LABOR CODE SECTION 6300.
- 15. INSTALL ESA PRIOR TO STARTING WORK, FENCE AT WORK LIMIT LINE AND AROUND ALL TREES TO BE SAVED. REMOVE FENCE AFTER ALL WORK IS ACCEPTED BY SCVWD.

1737 N. FIRST STREET, SUITE #300 SAN JOSE, CALIFORNIA 95112-4524

16. HDPE PIPE AND FITTINGS SHALL CONFORM TO THE REQUIREMENTS OF AWWA STANDARDS C906 AND SHALL BE PHILLIPS 66 DRISCOPIPE SERIES 1000 OR EQUAL.

GENERAL NOTES

- 1. SURVEY HORIZONTAL CONTROL IS BASED ON NAD 83 AND VERTICAL CONTROL IS BASED ON NAVD 88 ALL STATIONING AND DISTANCES INDICATED ON THE DRAWINGS ARE BASED ON HORIZONTAL MEASUREMENTS.
- 2. THE CONTRACTOR SHALL RESTORE ALL DISTURBED AREAS TO MATCH PRE-CONSTRUCTION CONDITION OR BETTER AFTER COMPLETION OF PROJECT.

SURVEY NOTES

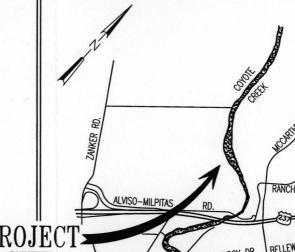
BENCH MARK:

ELEVATIONS SHOWN HEREON ARE BASED UPON BENCHMARK 234 PER "CONTROL VALUES FOR THE CITY OF SAN JOSE RECLAIMED WATER PROJECT", NAVD88. JANUARY 19, 1996: SURVEY SPIKE AND TOWILL TAG STAMPED "234". SET IN THE CENTERLINE OF OLD ALVISO-MILPITAS ROAD, NOW AN ACCESS ROAD TO THE FIELDS, ON THE NORTH SIDE OF HIGHWAY 237, 200 FT.± NORTH OF HIGHWAY 237, 900 FT. EAST OF ZANKER ROAD TO REACH, ENTER OFF ZANKER ROAD, IN THE CITY OF SAN JOSE ELEVATION 15.494 FEET.

BEARINGS SHOWN HEREON ARE BASED UPON FOUND MONUMENTS ON THE NORTHERN LINE OF "LANDS OF THE CITY OF SAN JOSE" SHOWN ON SHEET 3 OF 3 OF THE RECORD OF SURVEY BY CROSS LAND SURVEYING INC. DATED MAY 1994 (658 PM 6) AS N74'54'17"E. CALIFORNIA COORDINATE SYSTEM. ZONE III. NAD 83, DISTANCES SHOWN HEREON ARE GOUND DISTANCES; MULTIPLY DISTANCES SHOWN BY D 999945823 TO OBTAIN GRID DISTANCES.

TABLE OF CONTENTS

SHEET NO.	DESCRIPTION
1	TITLE, VICINITY MAP & NOTES
2	PLAN AND PROFILE
3	CONSTRUCTION DETAILS



PROJEC TECHNOLOGY DR. SITE SAN JOSE **MILPITAS**

> VICINITY MAP NOT TO SCALE

ABBREVIATIONS

ELEVATION

NOT IN CONTRACT

NOT TO SCALE

AGGREGATE BASE

FLARED END SECTION

ENVIRONMENTLY SENSITIVE AREA

PORTLAND CEMENT CONCRETE

SHEET

MAXIMUM

MINIMUM DIAMETER

SHT

FFS

ESA

		TO BE CONST.	EXIS
)IP	DUCTILE IRON PIPE	TO BE CONST.	EXIS
CC	PORTLAND CEMENT CONCRETE	·	
CP	REINFORCED CONCRETE PIPE		
CMP	CORRUGATED METAL PIPE		
Œ.	CENTER LINE		20
PT	POINT		20
KIST	EXISTING		
WHC	ORDINARY HIGH WATER ELEVATION		
NV	INVERT ELEVATION		
SD	STORM DRAIN	-	
TYP	TYPICAL		
STA	STATIONING		

GROUND SURFACE LIMIT OF WORK STORM DRAIN SLOPE DIRECTION

LEGEND



TREES - SAVE/PROTECT

SPOT ELEVATION

DESCRIPTION

CENTER LINE

CONTOUR

PROPERTY LINE

GRADE TO DRAIN

C24894 12/31/05

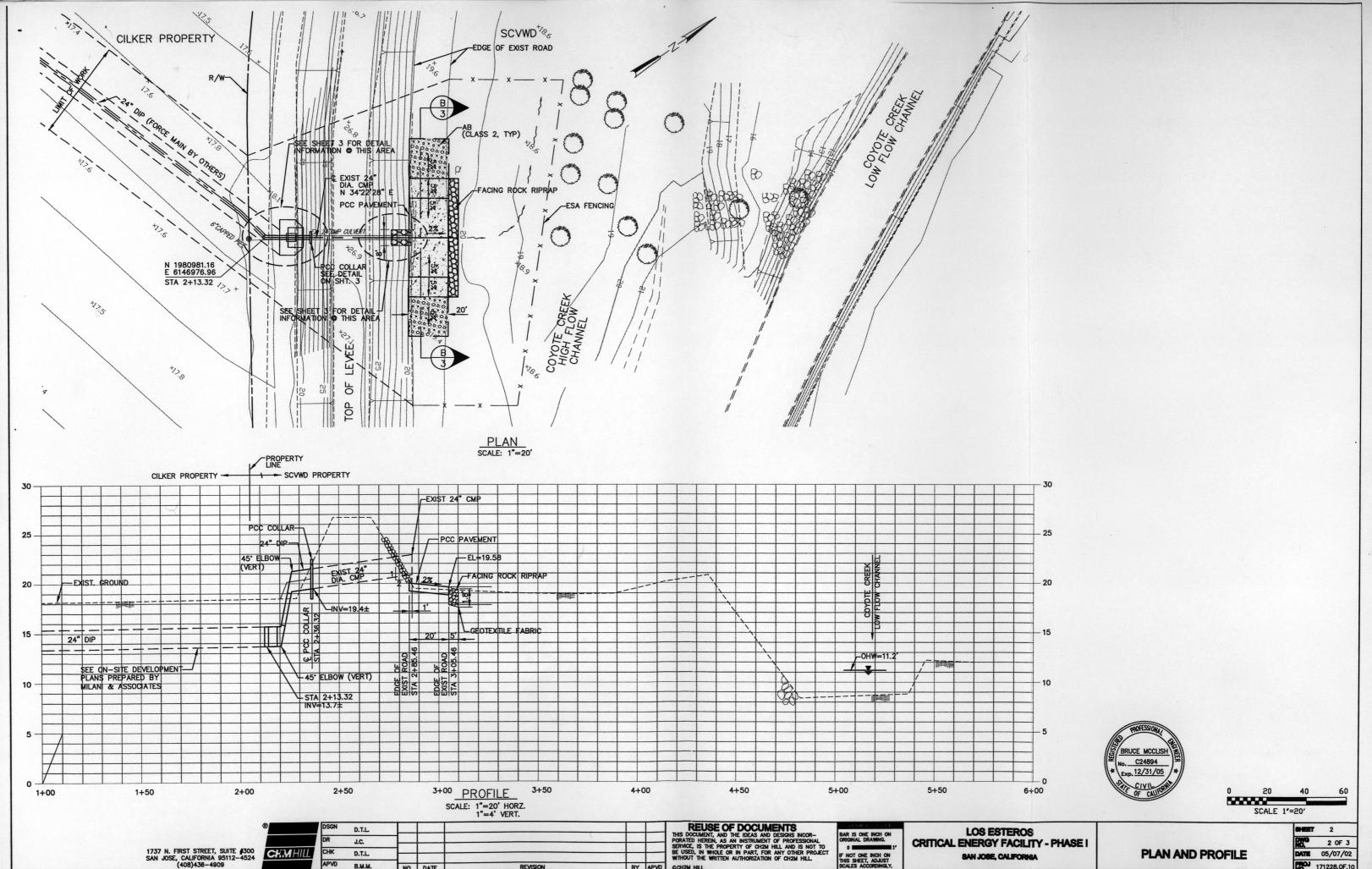
J.C. D.T.L. B.M.M. NO. DATE REVISION

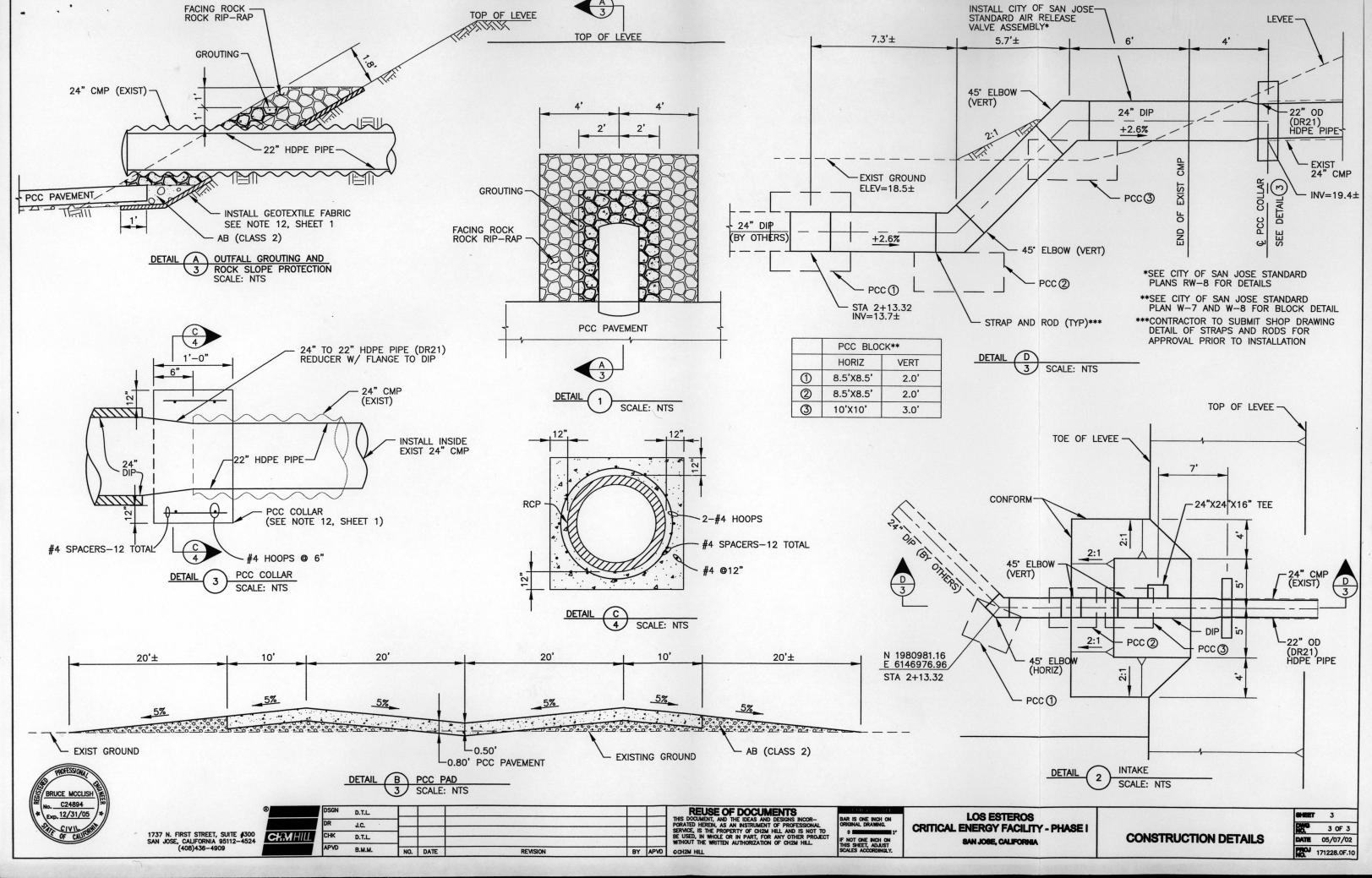
REUSE OF DOCUMENTS THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF CH2M HILL AND IS NOT TO BY APVD OCHEM HILL

LOS ESTEROS **CRITICAL ENERGY FACILITY - PHASE I** SAN JOSE, CALIFORNIA

TITLE. VICINITY MAP & NOTES

1 OF 3
DATE 05/07/02 171228.0F.10





Noise Supplemental Testimony

I. INTRODUCTION

- A. Name: Mark J. Bastasch
- **B. Purpose:** This testimony addresses the noise issues associated with the compressed construction schedule for the project.
- **C. Qualifications:** My qualifications were provided with my original testimony in this case and are incorporated by reference herein.
- **D. Prior Filings:** Prior filings were addressed in my original testimony in this case.

II. PROPOSED LICENSING CONDITIONS

The Applicant believes that the construction mitigation requirements proposed by the Commission staff in the Staff Assessment and Supplement remain adequate, even with the compressed construction schedule.

III. SUMMARY

Background

As stated in the applicants original testimony, except for steam blow and pile driving activities, the anticipated construction noise emission levels and equipment usage for each phase of construction will result in noise levels at the mobile home park that range from 46 to 57 dBA. These noise levels are anticipated to be audible at the mobile home park residences but are not expected to cause undue disturbances to residents, especially when compared to existing levels (10 p.m. to 5 a.m. average L90 of 50 dBA per Response to Data Request Noise-1).

Construction noise levels at the Cilker residence and the temporary trailer camp are expected to vary between 56 and 69 dBA (Applicants original testimony). As stated in the Staff Assessment, this means that general construction noise at the Cilker homes would at times exceed the existing ambient noise levels by approximately 10 dBA. Construction activities, including steam blows, can be conducted in accordance with Conditions NOISE-1 through NOISE-6. These conditions establish a noise complaint resolution process and limit the hours of noisy construction work. (per Applicants original testimony and staff assessment). Construction noise is also by its very nature temporary and in this case 5 to 6 months due to the proposed compressed construction schedule.

SUPPLEMENTAL NOISE TESTIMONY 14

As stated in Response to Data Request Noise-3, noise estimates are based on data reported in 1977 and actual levels are typically lower than predicted.

Consistency with LORS

The City of San Jose does not have a construction noise standard. The 7:00 p.m. to 7:00 a.m. restriction on construction activities is specific to sites that are within 500 feet of a residential unit (Title 20, City of San Jose Municipal Code, Section 100.450). The LECEF site and linear features are more than 500 feet from any existing residential unit (including the trailers on the Cilker's property). Therefore, construction noise from the LECEF site and linear features does not violate the City of San Jose's LORS.

The City's Zoning Ordinance, which does not regulate construction activities, was recently changed to state that the "sound pressure level generated by any use or combination of uses shall not exceed the decibel level at any property . . . except upon issuance and in compliance with a Conditional Use Permit as provided in Chapter 20.100." Those levels are 55 dBA for industrial use adjacent to residential use; 60 dBA for industrial use adjacent to commercial uses or 70 dBA for industrial use adjacent to industrial or uses other than residential or commercial purposes. The 55 dBA residential level will only be exceeded at the mobile home park during the loudest phases of construction. Those activities are already required to be conducted during daytime hours when noise levels from transportation sources are dominant. Existing hourly noise levels at the backyard of the Cilker home routinely exceed 55 dBA given their proximity to the highway. Only between Midnight and 4 a.m. do levels drop below 55 dBA. Again, noisy construction activities are limited to daytime hours.

Conclusion

Construction of LECEF, as with any construction project, will generate noise. The predicted levels at the mobile home park will be audible, but likely not disturbing given the existing noise levels. Noise levels at the Cilker's residences may exceed existing levels by 10 dBA. Limiting the hours of noisy construction activities to the daytime hours will reduce nighttime construction noise. Heavy earthwork activities would primarily be conducted during the day while nighttime construction activities would typically include quieter tasks such as pulling wires, fitting pipe, etc. The mitigation measures proposed in the Staff Assessment establish a noise complaint resolution process and limit the hours of noisy construction work. These are sufficient measures to mitigate temporary construction impacts to a less than significant level.

SUPPLEMENTAL NOISE TESTIMONY 15

DECLARATION OF

Mark J. Bastasch

I, Mark J. Bastasch, declare as follows:

Portland, Oregon

- 1. I am presently employed by CH2M HILL Incorporated as a Project Engineer.
- 2. A copy of my professional qualifications and experience presented in my previously filed testimony and incorporated by reference herein.
- 3. I prepared the attached supplemental testimony on Noise and Vibration for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: _	5/5/2002	Signed: Mul J Bust
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FORM DECLARATION.DOC

At:

Public Health Supplemental Testimony

I. INTRODUCTION

- A. Name: Jerry Salamy
- **B. Purpose:** This testimony addresses the public health issues associated with the compressed construction schedule for the project.
- **C. Qualifications:** My qualifications were provided with my original testimony in this case.
- **D. Prior Filings:** Prior filings were addressed the original Public Health testimony in this case.

II. PROPOSED LICENSING CONDITIONS

The Staff Assessment for the project filed by the CEC did not propose any conditions for certification for public health. However, mitigation measure (AQ-SC1, AQ-SC2, and AQ-SC3) were proposed in the Air Quality section of the Staff Assessment and Supplement which were intended to reduce the LECEF's construction emissions to below significant levels. The Applicant believes that these construction mitigation requirements proposed by the Commission staff (AQ-SC1, AQ-SC2, and AQ-SC3) remain adequate, even with the compressed construction schedule.

III. SUMMARY

In the Committee's order reopening the record dated April 25, 2002, the Committee requested that each party provide supplemental testimony regarding the construction impacts associated with a 24-hour construction schedule. This supplemental testimony has been prepared to address that request.

To address the concerns raised by the Committee in its order reopening the record of this proceeding, a more detailed air quality analysis was conducted that reflects an accelerated construction schedule. The assumptions used in modeling impacts with the analysis were that during the months of June through September, construction equipment is operating during 20 hours each day, but that this operation can occur at any time during a 24-hour period.

The estimated health risks associated with Diesel exhaust particulate matter were analyzed to determine if increased risks could be associated with a compressed construction schedule. The analysis presented in the AFC concluded that Diesel exhaust particulate matter would reach a maximum

concentration, at any location, of $0.073~\mu g/m^3$, with an associated health risk of 0.3 in one million. Based on an accelerated construction schedule, the maximum Diesel exhaust particulate matter concentration increases to $0.189~\mu g/m^3$, with an associated health risk of 0.8 in one million. Both the original and the revised levels are well below the 10 in one million level considered to be significant.

Conclusion

With the implementation of the CEC staff's standard air quality construction mitigation measures (AQ-SC1, AQ-SC2, and AQ-SC3), and based on the above analyses, the estimated human health risks potentially associated with an accelerated construction schedule will be less than significant.

SUPPLEMENTAL NOISE TESTIMONY 18

DECLARATION OF

Jerry Salamy

I, Jerry Salamy, declare as follows:

- 1. I am presently employed by CH2M HILL Incorporated as a Air Quality Engineer.
- 2. A copy of my professional qualifications and experience presented in my previously filed testimony and incorporated by reference herein.
- 3. I am sponsoring the attached supplemental testimony on Public Health for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated 5/9/200Z

Signed:

At: Sacramento, CA

SALAMY DECLARATION.DOC

Traffic and Transportation Supplemental Testimony

I. INTRODUCTION

- A. Name: Jeanne Acutanza
- **B. Purpose:** This testimony addresses the Traffic and Transportation issues associated with the compressed construction schedule for the project.
- **C. Qualifications:** My qualifications were provided with my original testimony in this case and are incorporated by reference herein.
- **D. Prior Filings:** Prior filings were addressed in my original testimony in this case.

II. PROPOSED LICENSING CONDITIONS

The Applicant believes that the construction mitigation requirements proposed by the Commission staff in the Staff Assessment and Supplement (TRANS-1 and TRANS-2) remain adequate, even with the compressed construction schedule.

III. SUMMARY

Background

For the AFC's Traffic and Transportation subsection it was documented that the construction phase will take approximately 4 to 6 months and two construction shifts will be used to expedite the construction.

The purpose of this testimony is to summarize the potential impacts associated with a more defined project construction schedule. This schedule defined the construction period occurring 24-hours per day (3:00 am to 3:00 pm) for the first two months of construction and 20 hours per day for the remaining 4 to 5 months (4:00 am to 2:30 pm and 3:00 pm to 1:00 am).

Consistency with LORS

Since the original premise of the work schedule is still applicable⁴, the more defined construction schedule does not change the original assessment of the applicable LORS stated in subsection 8.10.3 (Laws, Ordinances, Regulations and Standards) of the AFC. To fulfill requirements and be consistent with the Santa Clara Valley Congestion Management Plan, a Transportation Management Plan

 $^{^4}$ Los Esteros Critical Energy Facility Application for Certification, Section 8.10.2.3, Page 8.10-12, August 2001.

(TMP) was created. Within the TMP, a defined construction route, construction work schedule controls to minimize peak hour traffic disturbances and a monitoring program were established to support the policies of the Santa Clara Valley Congestion Management Plan. The detailed construction schedule is consistent with these controls set forth.

Conclusion

Because the TMP and AFC assumed the construction phase lasting 4 to 6 months with two construction shifts occurring daily, the TMP and AFC still meet all necessary LORS and therefore no new mitigation is proposed with the defined project construction schedule. The AFC's assessment of the construction impacts during the peak hour assumes construction shift impacts during the peak hour. This is a conservative assessment because current construction scheduling indicates most trips would occur outside the peak hour. With the more defined construction schedule, all previous traffic impacts would be reduced since the work shifts occur outside the peak hours and therefore this would be a benefit to overall traffic conditions.

Within the TMP, controls were proposed that the contractor must provide shift changes outside of the morning and afternoon peak periods. This is fulfilled with the proposed construction shifts (3:00 to 4:00 am in the morning and 2:30 to 3:00 pm in the afternoon).

Therefore, the proposed traffic and transportation mitigation measures presented in the Staff Assessment and Supplement (TRANS-1 and TRANS-2) result in a further reduction of already insignificant construction traffic and transportation impacts.

The Applicant has submitted the TMP to the Commission's Compliance Project Manager (CPM) and local/state agencies for approval on February 11, 2002. The Applicant has received and incorporated comments on the TMP from the local and state agencies and is awaiting approval of the TMP by the Commission's CPM.

DECLARATION OF

Jeanne Acutanza

I, Jeanne Acutanza, declare as follows:

- 1. I am presently employed by CH2M HILL Incorporated as a Transportation Project Manager.
- 2. A copy of my professional qualifications and experience presented in my previously filed testimony and incorporated by reference herein.
- 3. I prepared the attached supplemental testimony on Traffic and Transportation for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated:	: May 6, 2002	Signed: Manne
At:	Bellevue, Washington	

FORM DECLARATION.DOC 1

Transmission System Engineering Supplemental Testimony

I. INTRODUCTION

- A. Name: Amanali Amirali, P.E.
- **B. Purpose:** This testimony addresses the electrical transmission system interconnection of LECEF with the PG&E 115 kV transmission grid and the associated agreements between PG&E and LECEF LLC.
- **C. Qualifications:** Amanali Amirali, P.E., has more than 12 years of experience working in the electric utility industry. During this tenure he has developed a diverse portfolio of job skills in the areas of power systems operations, planning, and contracts.

II. Transmission System Interconnection

LECEF LLC and PG&E have reached consensus on the Generator Special Facilities Agreement ("GSFA") and Generator Interconnection Agreement ("GIA") for LECEF. The GSFA outlines the cost and the work associated with interconnecting the LECEF to the PG&E grid. The GIA, on the other hand, specifies terms, conditions and limitations on operations (should there be any) for this power generating facility both before and after the completion of PG&E Los Esteros substation. PG&E had tendered to LECEF LLC the execution copies of the above agreements. The execution copies of these agreements were signed by LECEF on April 19, 2002, and returned to PG&E. Copies of these final agreements are attached to this testimony as Attachment Trans-1.

The interconnection of LECEF to the PG&E 115kV Transmission System and operations of LECEF is not dependent on the construction of PG&E Los Esteros Substation. The Letter Agreement Supplementing, Clarifying, and Modifying the GSFA between PG&E and LECEF LLC outlines the conditions for the Interconnection of LECEF before the completion of PG&E's Los Esteros Substation. PG&E's Los Esteros Substation will not be built prior to LECEF's completion. Until Los Esteros Substation is built, LECEF will transmit energy to the grid via a temporary 2000 foot 115 kV overhead wood pole line that will be built to interconnect LECEF to PG&E's Nortech-Trimble 115 kV line near Highway 237. PG&E will design, build and own the temporary tap line. Previously filed testimony demonstrates that this line can and will be constructed well in advance of the completion of the LECEF's commercial operation. (See attached Letter from Tom Marki of PG&E to Mr. Nick Gaglia dated March 27, 2002 in Attachment Trans-1.)

Following the completion of the PG&E's Los Esteros substation, a new GSFA would be executed between PG&E and LECEF LLC. LECEF would have two short 115 kV under-ground transmission lines (approximately 250 feet), interconnecting it to PG&E's Los Esteros Substation to the North/North West. The current agreements between PG&E and the LECEF LLC are clear that the temporary interconnect to the PG&E system via the wood pole line will not be terminated until such time as the permanent interconnect to the Los Esteros Substation is available and ready to be implemented by both PG&E and LECEF LLC.

Declaration



WE DELIVER ENERGY."

Generator Special Facilities Agreement

At the request of LOS ESTEROS CRITICAL ENERGY FACILITY, LLC, (Applicant), PACIFIC GAS AND ELECTRIC COMPANY (PG&E) hereby agrees to furnish at Applicant's expense certain facilities described in Exhibit 1 to Appendix A ("Special Facilities"). PG&E intends to have such Special Facilities available on or about December 1, 2002, for the interconnection of Applicant's electric generating plant with PG&E's system and/or PG&E's delivery of electrical standby service to Applicant's premises at or near 1515 Alviso-Milpitas Road in San Jose, California.

- 1. This Generator Special Facilities Agreement (Agreement) includes Appendix A, Detail of Special Facilities Charges, with Exhibit 1, Description of Special Facilities, Appendix B, Project Development Milestones, and Appendix C, Payment Schedule, which are attached and incorporated herein by reference. Additionally, the parties have negotiated a Supplemental Letter Agreement and Generator Interconnection Agreement, both of which they are executing concurrently. The Supplemental Letter Agreement shall clarify, expand upon, and, in part, modify this Agreement. Such Supplemental Letter Agreement shall be submitted to the Federal Energy Regulatory Commission (FERC) as part of PG&E's Section 205 submission of this Agreement. Appendix A, B and C may be revised or superseded by mutual written agreement and without formal amendment of the remainder of this Agreement. In addition, Appendix B may be revised or superseded pursuant to orders of the Federal Energy Regulatory Commission (FERC) without formal amendment of the remainder of this Agreement.
- 2. Applicant shall pay PG&E, on written demand prior to commencement of any work by PG&E, an initial charge equal to the sum of the amounts which are specified in Appendix A. Furthermore, Applicant shall pay PG&E all of PG&E's actual costs reasonably incurred in connection with installing the Special Facilities. Within 180 days of completion of the work, PG&E shall determine the actual cost of installing the Special Facilities and shall provide Applicant a final accounting. If the actual cost is greater than the total amount that has been paid by Applicant, then PG&E shall bill Applicant for the remaining amount, including interest determined pursuant to Section 35.19(a) of FERC's Regulations, 18 CFR § 35.19(a). If the actual cost is less than the total amount that has been paid by Applicant, then PG&E shall pay Applicant the difference, including interest determined-pursuant to Section 35.19(a) of FERC's Regulations, 18 CFR § 35.19(a).
- Applicant also shall pay PG&E any applicable monthly rates and charges for service under PG&E's tariff schedules plus an ownership charge, either (a) or (b) below as specified in Appendix A, namely:
 - (a) COST-OF-OWNERSHIP CHARGE representing PG&E's continuing monthly cost of financing (if applicable), owning and maintaining Special Facilities; or
 - (b) An EQUIVALENT ONE-TIME CHARGE which is equal to the present worth of the monthly COST-OF-OWNERSHIP CHARGE in perpetuity. The COST-OF-OWNERSHIP CHARGE shall commence on the date Special Facilities are first available for Applicant's use, as such date is established in PG&E's records. PG&E will notify Applicant, in writing, of such commencement date. The EQUIVALENT ONE-TIME CHARGE (if applicable) shall be payable by Applicant to PG&E on demand.
- 4. The ownership charge set forth in sections 3(a) or 3(b) herein is determined as follows:
 - (a) CPUC Jurisdictional Interconnections. The ownership charge is determined in accordance with the applicable percentage rates established in the Special Facilities section of PG&E's Electric Rule 2 or any CPUC Rule or tariff which supersedes Electric Rule 2 with regard to cost of facility ownership.
 - (b) FERC jurisdictional Interconnections. Initially, the ownership charge is determined in accordance with the applicable percentage rates established in the Special Facilities section of PG&E's Electric Rule 2 as approved by the FERC.

- 5. Where it is necessary to install Special Facilities on Applicant's premises, Applicant hereby grants to PG&E:
 - (a) the right to make such installation on Applicant's premises along the shortest practical route thereon with sufficient legal clearance from all structures now or hereafter erected on Applicant's premises; and
 - (b) the right of ingress and egress from Applicant's premises at all reasonable hours for any purposes reasonably connected with the operation and maintenance of Special Facilities.
- 6. Where formal rights of way or easements are required on or over property of Applicant or the property of others for the installation of Special Facilities, Applicant agrees that PG&E shall use all reasonable efforts to obtain such rights of way or easements which shall be at Applicant's expense, or if Applicant and PG&E agree otherwise, Applicant shall obtain any necessary permanent rights of way or easements, satisfactory to and without cost to PG&E.
- 7. PG&E shall not be responsible for any delay in completion of the installation of Special Facilities resulting from shortage of labor or materials, strike, labor disturbance, war, riot, weather conditions, governmental rule, regulation or order, including orders or judgments of any court or regulatory agency, delay in obtaining necessary rights of way and easements, acts of God, delays resulting from PG&E's responsibility to coordinate certain electric interconnections with the California Independent System Operator Corporation or any other cause or condition beyond the control of PG&E, nor shall PG&E be liable for incidental, indirect, special, punitive, or consequential damages for any such delay. PG&E shall have the right, if for one of the above reasons it is unable to obtain materials or labor for all of its construction requirements, to allocate materials and labor to construction projects which it deems, in its sole discretion, most important to serve the needs of its customers, and any delay in construction, hereunder resulting from such allocation shall be deemed to be a cause beyond PG&E's control. In any event, PG&E's total liability for any delay in the completion of the installation of Special Facilities shall not exceed the amount of Special Facilities Charges paid by Applicant.
- 8. In the event that PG&E is prevented from completing the installation of Special Facilities for reasons beyond its control after twelve (12) months following the date of this Agreement, PG&E shall have the right to supersede this Agreement, subject to Applicant's election as provided below, upon at least thirty (30) days' written notice to Applicant and adjust any amounts paid or required to be paid by Applicant hereunder that may be due based on that portion of the Special Facilities then completed, if any, utilizing the estimated costs developed by PG&E for this Agreement. Such a superseding agreement, if any, shall be in substantially the same form as this Agreement, be executed by both parties hereto, and shall provide that costs be allocated to the portion of the Special Facilities then completed, if any, consistent with those costs estimated by PG&E for this Agreement. If Applicant elects not to execute a superseding agreement, this Agreement shall be terminated and the provisions of paragraph 11 herein shall be applied to that portion of Special Facilities then completed, if any. Applicant also shall reimburse PG&E for any expenses it may have incurred for engineering, surveying, right of way acquisition and other work associated with that portion of special facilities not installed.
- 9. If it becomes necessary for PG&E to alter, rearrange or make addition to Special Facilities in order to maintain parallel operation of Applicant's generation or electrical standby service to Applicant's premises, Applicant shall be notified, in writing, of such necessity and shall be given the option to either terminate this Agreement upon thirty (30) days' written notice to PG&E, or to pay to PG&E additional Special Facilities charges consisting of:
 - (a) a facility termination charge for that portion of Special Facilities which is being removed because of alteration, rearrangement or addition to Special Facilities. Such charge to be determined in the same manner as described in paragraph 11 herein; plus,
 - (b) an additional ADVANCE and/or REARRANGEMENT CHARGE, if any for any new Special Facilities which shall be applied in the same manner as prescribed in paragraph 2 herein; plus,
 - (c) a revised monthly COST-OF-OWNERSHIP CHARGE or EQUIVALENT ONE-TIME CHARGE based on the estimated installed costs of all new and remaining Special Facilities. Such revised monthly COST-OF-OWNERSHIP CHARGE or EQUIVALENT ONE-TIME CHARGE shall be applied in the same manner as prescribed in paragraph 3 herein.
- 10. This Agreement shall become effective when executed by the parties hereto and, except as provided for in paragraphs 8 and 9 herein, shall remain in force until one of the following events occurs:
 - (a) Applicant fails to meet the project development milestones listed in Appendix B of this Agreement, or

- (b) A Generator Interconnection Agreement or parallel operation agreement (if applicable) no longer exists between Applicant and PG&E which would occasion the need for Special Facilities; or
- (c) The ownership of Special Facilities or any portion thereof is deeded to a public authority; or
- (d) Applicant fails to pay the monthly COST-OF-OWNERSHIP CHARGE prescribed in this Agreement, if applicable.

Either party shall provide the other at least thirty (30) days' written notice of termination and an opportunity to cure any default before termination becomes effective pursuant to this paragraph.

- 11. Upon termination of the Agreement for any reason:
 - Applicant shall pay to PG&E on written demand (in addition to all other monies to which PG&E may be legally entitled by virtue of such termination) a facility termination charge defined as the estimated installed cost, plus the estimated removal cost less the estimated salvage value for any Special Facilities which can be removed, all as determined by PG&E in accordance with its standard accounting practices. PG&E shall deduct from the facility termination charge the ADVANCE plus the unamortized balance of the EQUIVALENT ONE-TIME CHARGE previously paid, if any. If the ADVANCE paid plus the unamortized balance of the EQUIVALENT ONE-TIME CHARGE, if any, is greater than the facility termination charge, PG&E shall refund the difference, without interest to Applicant; and
 - (b) PG&E shall be entitled to remove and shall have a reasonable time in which to remove any portion of the Special Facilities located on the Applicant's premises; and
 - (c) PG&E may, at its option, alter, rearrange, convey or retain in place any portion of the Special Facilities located on other property off Applicant's premises. Where all or any portion of the Special Facilities located off Applicant's premises are retained in place in anticipation of providing permanent service to customers of PG&E, an equitable adjustment shall be made in the facility termination charge.
- 12. In the event any of the Special Facilities are used during the term of this Agreement to provide service to a party other than the Applicant, an adjustment shall be made in accordance with then-current regulatory policy.
- Except as otherwise provided in this Agreement or in the Supplemental Letter Agreement, Special Facilities shall at all times be the property of PG&E.
- This Agreement does not give the Applicant any right to build, place, or maintain any of Applicant's or third party facilities on, under or over any PG&E land, easements or property. If Applicant wishes to build, place, or maintain its facilities (or a third party's facilities) associated with the generation project on, under or over any PG&E land, easements or property, Applicant must specifically request the right to make such use and identify the PG&E property involved, regardless of whether Applicant wants a lease, easement, license or other agreement from PG&E. PG&E will separately consider whether or not it is willing to permit such use. In addition, PG&E may need to obtain approval from the CPUC through a filing under Section 851 of the California Public Utilities Code, or obtain a waiver of such filing requirements, before PG&E can provide Applicant with any right to use its land. This CPUC approval could potentially take six to eighteen months or longer to obtain, and the CPUC may deny such applications. Applicant should notify PG&E as soon as possible of any potential request for permission to use or cross PG&E land, easements or property. PG&E shall bear no responsibility for any inability to obtain such CPUC approval or for any delays connected with obtaining such CPUC approval.
- 15. This Agreement shall be subject to all of PG&E's applicable tariffs on file with and authorized by the CPUC and FERC, and shall at all times be subject to such changes or modifications as the CPUC and FERC may direct from time to time in the exercise of their jurisdictions.
- [] (check if applies) Applicant and PG&E agree that the Special Facilities described in this Agreement are already in place as of the date of this Agreement and that paragraphs 6, 7, and 8 of this Agreement and Appendix B of this Agreement are not applicable.
- 17. Nothing contained herein shall be construed as affecting in any way the right of PG&E to unilaterally make application to the FERC for a change in rates under Section 205 of the Federal Power Act (FPA) and pursuant to the FERC's Rules and Regulations promulgated thereunder, Applicant shall have the right to protest and object to such change in rates and otherwise to exercise any and all rights it may have with respect thereto, including its rights under Section 206 of the FPA. The term "rates" as used herein shall mean all rates, terms and conditions contained in this Agreement. A change in rates may include, but not be limited to, not only changes in rates and charges but also in the underlying methodology by which such rates and charges are

developed.

- 18. The rights under this Agreement shall not be assignable or transferable nor the duties delegable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, that the other Party's consent shall not be required for (i) assignments in connection with interests that arise by reason of any deed of trust, mortgage, indenture or security agreement granted or executed by such Party, and (ii) assignments to affiliates where, in the absence of the other Party's consent thereto, the assigning Party retains responsibility for the payment of all of its obligations and liabilities hereunder. This section shall not restrict PG&E's ability to assign this Agreement to a successor entity owning the transmission system in accordance with a confirmed Plan of Reorganization of PG&E.
- 19. Taxes Resulting from Applicant's Contribution of Special Facilities
 - (a) Representations And Covenants. In accordance with IRS Notice 2001-82 and IRS Notice 88-129, Applicant represents and covenants that (i) ownership of the electricity generated at Applicant's electric generating plant will pass to another party prior to the transmission of the electricity on PG&E's system, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to PG&E for the Special Facilities will be capitalized by Applicant as an intangible asset and recovered using the straight-line method over a useful life of 20 years, and (iii) any portion of the Special Facilities that is a "dual-use intertie" within the meaning of IRS Notice 88-129, is reasonably expected to carry only a de minimis amount of electricity to the direction of Applicant or parties related to the Applicant during the first ten taxable years of PG&E, beginning with the year in which the transferred property is placed in service. For this purpose, "de minimis amount" means no more than 5% of the total power flows in both directions, calculated in accordance with the "5% test" set forth in IRS Notice 88-129. At PG&E's request, Applicant shall provide PG&E with a report from an independent engineer confirming its representation in clause (iii), above.
 - (b) Indemnification for Taxes Imposed Upon PG&E. Notwithstanding paragraph 19(a), Applicant shall protect, indemnify and hold harmless PG&E from income taxes imposed against PG&E as the result of payments or property transfers made by Applicant to PG&E under this Agreement for the construction of Special Facilities, as well as any interest and penalties (other than interest and penalties attributable solely to failure by PG&E to pay taxes in a timely manner for which Applicant made timely payment to PG&E). PG&E shall not include a gross-up for income taxes in the amounts it charges Applicant under this Agreement unless (i) PG&E has determined, in good faith, that the payments or property transfers made by Applicant to PG&E for the construction of Special Facilities should be reported as taxable income, or (ii) any governmental authority with taxing or rate jurisdiction over PG&E directs PG&E to report such payments or property transfers as taxable income. Applicant shall reimburse PG&E for such taxes on a fully grossed-up basis, calculated in accordance with paragraph 19(c), within 30 days of receiving written notification from PG&E of the amount due, including detail about how the amount was calculated.
 - (c) Tax Gross-Up Amount. Applicant's liability for taxes under this paragraph 19 shall equal the product of (i) the gross income realized by PG&E for income tax purposes, whether attributable to the circumstances described in paragraph 19(b) or paragraph 19(d), with respect to the payments or property transfers made by Applicant to PG&E under this Agreement for the construction of Special Facilities (but not including any gross income attributable to the payment of the gross-up calculated under this paragraph 19(c)) (the "Gross Income Amount") multiplied by (ii) the "Gross-up Percentage" (as defined below). The "Gross-up Percentage" shall equal the gross-up percentage determined in accordance with "method 5," as described in CPUC Decision 87-09-026 for taxable contributions-in-aid-of-construction paid to PG&E in the year the Gross Income Amount is includable in PG&E's taxable income. The "Gross-up Percentage" shall be presumed to be the percentage set forth in PG&E's electric tariffs accepted by the CPUC for taxable contributions in aid of construction. To the extent FERC requires that an alternative gross-up calculation be used to compute generator liability for taxes covered by this Agreement, such alternative methodology shall be used, but only if FERC directs that its order should modify gross-up agreements entered into prior to the date of the FERC order.
 - (d) Subsequent Taxable Events. If, within 10 years from the date on which the Special Facilities are placed in service, (i) Applicant breaches any of the covenants contained in paragraph 19(a), (ii) a "disqualification event" occurs within the meaning of IRS Notice 88-129, or (iii) this Agreement terminates and PG&E retains ownership of the Special Facilities, then Applicant shall pay a tax

gross-up for the taxes imposed on PG&E, calculated using the methodology described in paragraph 19(c); provided, however, that Applicant will also reimburse PG&E for any such taxes imposed more than 10 years after the date the Special Facilities are placed in service, but only to the extent either 1) PG&E is unable to include such tax costs in its cost of service or 2) such tax costs are included in PG&E's cost of service but the FERC (or other governing regulatory authority) directs that such taxes should nevertheless also be subject to reimbursement.

(e) Security.

- (i) To ensure payment of any indemnity required by paragraphs 19(b) and (d), not later than sixty (60) days prior to initial energy deliveries, Applicant shall provide security which PG&E deems adequate. PG&E shall deem satisfactory any security provisions of general applicability which FERC establishes in docket number RM02-1-000, or any other docket in which FERC resolves the issue of the need for, and possible form and amount of residual security associated with generator interconnections.
- (ii) Unless and until FERC provides such guidance, Applicant shall either provide a letter of credit or equivalent security in the amount of the gross-up computed as if tax had been incurred at inception; or pay PG&E in cash an amount equal to 20% of the amount of the gross-up computed as if tax had been incurred at inception.
- In the alternative, if the equity interest in Applicant is ultimately owned at least 80% by a (iii) parent company which owns multiple generation projects interconnected with PG&E, which all qualify for the safe harbor in IRS Notice 2001-82, and is willing to provide a letter of credit that would apply to the potential gross-up for any of those projects, then such parent company may provide a letter of credit equal to the potential ITCC tax liability associated with the generation project for which PG&E's potential ITCC liability is the greatest; provided that the equity ownership interest for such generation project is ultimately owned at least 80% by such parent. A parent providing a letter of credit under this subsection shall provide PG&E with documentation satisfactory to PG&E that it satisfies (and continues to satisfy) the 80% equity ownership condition of the preceding sentence. To the extent the parent no longer qualifies under this subparagraph 19(e)(iii), additional security may be required at PG&E's sole discretion in accordance with subparagraphs 19(e)(i) and 19(e)(ii). The terms of the letter of credit or other security arrangement shall provide PG&E with reimbursement for the potential taxes imposed on the reportable gross income described in paragraph 19(b) or 19(d) on a fully grossed-up basis, calculated in accordance with paragraph 19(c), within 30 days of receiving written notification from PG&E of the amount due, including detail about how the amount was calculated. The security option provided in this paragraph 19(e)(iii) is intended to apply only to FERC-jurisdictional interconnection arrangements, and shall not apply to generation projects interconnected under CPUC-jurisdictional arrangements. The fact that the ultimate owner of a particular generation project interconnected under FERC-jurisdiction also owns a project interconnected under CPUC authority shall not disqualify it from eligibility for this security option for its FERCjurisdictional projects.
- (f) No Waiver with Respect to Residual Security Obligations. Nothing in this paragraph 19 shall waive either Party's rights pursuant to sections 205 or 206 of the Federal Power Act or otherwise to support or oppose, in any proceeding or forum, the need for, the form of, and the amount of any residual ITCC security, if any, which PG&E may obligate Applicant to maintain.
- 20. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile signature page were an original thereof.

Dated this	day of	_, 2002				
Los Esteros Critic	cal Energy Facility, LLC Applicant		PACIFIC GAS	S AND ELECTRIC C	COMPANY	
ву:	(Signature)		BY:	(Signature		
	Type or Print Name)	Robert L. Lamkir Vice President)	(Type or Print	Name)	,
·			TITLE:			
Mailing Address:	•					
Los Esteros Criti	cal Energy Facility, LLC			* .		
c/o Calpine Corp						
4160 Dublin Blvd						

Attachments:

Electric Rule 2 Appendix A Appendix A, Exhibit 1 Appendix B (if applicable) Appendix C,Payment Schedule

Appendix A

Detail of Special Facilities Charges

I. Applicability

The application of charges specified herein are pursuant to the provisions of this Agreement between LOS ESTEROS CRITICAL ENERGY FACILITY, LLC (Applicant) and PACIFIC GAS AND ELECTRIC COMPANY (PG&E) and shall be a part thereof and in effect until superseded by mutual agreement.

1.	<u>lnit</u>	<u>Initial Charge</u>						
	A.	Net cost of all Special Facilities	\$	A.A	- ست			
	B.	Less the cost of "removable and reusable" Special Facilities which are provided, installed and furnished by PG&E pursuant to Rule No. 21	(\$	N/A)			
	C.	ADVANCE	\$		_1			
	D.	Less PG&E's estimate of the cost of Special Facilities provided, installed and deeded to PG&E by Applicant (includes costs of design and administration by PG&E)	(\$	N/A)			
	E.	Plus the cost of design, administration and inspection by PG&E of Special Facilities provided, installed and deeded to PG&E by Applicant	\$	N/A				
	F.	Plus REARRANGEMENT CHARGE	\$	N/A	_			
	G.	Initial Charge	\$		2			
III.	-	stalled Cost of PG&E's Existing Facilities Allocated to	\$	N/A	_1			

¹ Used in calculation of the monthly COST OF OWNERSHIP CHARGE or EQUIVALENT ONE-TIME CHARGE.

² Pursuant to paragraph 19 of the Agreement, the ITCC tax has not been included in these charges.

IV. Monthly Cost of Ownership Charge

Special Facilities financed by:	Application Current Base Percentage Rate		Monthly Charge
A. Applicant	ADVANCE (II.C above = 1. + 2. below) 1. Cost of distribution facilities \$ N/A Less allowance for existing facilities (\$ N/A) 3 Net amount = \$ N/A 2. Cost of transmission facilities \$ Less allowance for existing facilities (\$ N/A) 3 Net amount = \$.	x <u>:%³</u> /mo x <u>%</u> ³/mo	=\$ <u>N/A</u> /mo =\$//mo
B, PG&E	"Removable and reusable" Special Facilities (II.B above = 3. + 4. below) 3. Distribution facilities	x <u>N/A</u> /mo x <u>N/A</u> /mo	= \$ <u>N/A</u> /mo = \$ <u>N/A</u> /mo
C. Applicant	Existing facilities allocated as Special Facilities (III above = 5. + 6. below) 5. Distribution facilities	x <u>N/A</u> /mo x <u>N/A</u> /mo	.=\$ <u>N/A</u> /mo =\$ <u>N/A</u> /mo
D. Total Monthly COST OF OWNERSHIP CHARGE			

٧.	EQUIVALENT ONE-TIME CHARGE (in lieu of monthly COST OF OWNERSHIP CHARGE)
	Check here if applicable
	\$ N/A / mo (IV.D above) x 12 mo. x N/A (present worth factor) = \$ N/A

This percentage rate is set forth in Section I of PG&E's Electric Rule No. 2 and is subject to change upon authorization by the California Public Utilities Commission, and as approved by the FERC. The current applicable CPUC-approved monthly Cost of Ownership Rates for Distribution-level, customer-financed Special Facilities and Transmission-level, customer-financed Special Facilities are 0.46% and 0.31% respectively, which became effective August 5, 1996.

Where Special Facilities displace PG&E's existing facilities, this allowance assures the exclusion of PG&E's existing ownership costs from Applicant's monthly COST OF OWNERSHIP CHARGE or EQUIVALENT ONE-TIME CHARGE.

EXHIBIT 1

DESCRIPTION OF SPECIAL FACILITIES

Substation Work
Protection Modification and
Communications

Substation Total

Land Work Temporary 115kV easement related cost

Land Work Total

Transmission Line Work Engineering, Material, Labor

\$'

Transmission Line Work Total

\$

Total \$...

Appendix B Project Development Milestones

follo EST	Appendix B describes project milestones to be met by developers of new generation resources. If any of the owing project milestones are missed, the Generator Special Facilities Agreement (GSFA) executed by LOS **EROS CRITICAL ENERGY FACILITY, LLC on will terminate pursuant to the terms of paragraph 10(a) me GSFA.
Mile	estones
Fail GSI	lure to comply with the applicable milestones results in the loss of interconnection priority and termination of the FA. If lost, interconnection priority for a project can be reestablished by submitting a new Application.
The	project milestones to be met by Applicant are as follows:
1.	Submit a Final Project Development Schedule within 8 months of executing the Generator Special Facilities Agreement. A GSFA for this project was executed on; therefore, a final project development schedule must be received by
2.	Provide within 6 months of executing a GSFA: (a) proof of filing and acceptance of the Applicant's Critical Path Permit, and (b) the expected date of receipt of such permit.
3.	Provide by the date specified by the Applicant in the Final Project Development Schedule either (a) written request to PG&E to begin interconnection engineering and material procurement and make payments to PG&E as specified in the GSFA or (b) the date when the Applicant will start construction of any interconnection facilities it plans to build.
4.	By the date specified in the Final Project Development Schedule, start construction of the project.
5.	Successfully complete parallel testing and start Operation within three years of executing the GSFA (no later than).
Mis	ssed Milestones
agr ger whi	e parties have an obligation to meet the milestone deadlines pursuant to terms of the applicable tariffs and elements. Exceptions may be granted by PG&E on a non-discriminatory basis where: (1) no other prospective herator would be harmed by the exception <u>e.g.</u> , if no other generators were in the priority queue behind the party ich had missed a milestone, or (2) the milestone was missed for reasons outside of the party's control <u>e.g.</u> , due to Uncontrollable Force.
Def	finitions
	al Project Development Schedule: A written document which includes the following information concerning the plicant's generation project.
11.	Type of project (technology) Capacity Estimated average annual energy output Location and description of site Project ownership or management Fuel source Type of generating and ancillary equipment Method for affirming primary energy source Permit application schedule Permit receipt schedule Construction start date On-line or operation date
1/	This term is used as defined in PG&E's Transmission Owner's Tariff.

Operation: A generating facility is considered to be in operation: (1) after it has passed parallel testing with the electric grid, (2) obtained any necessary approvals from the California Independent System Operator Corporation, and (3) when it can consistently meet its energy delivery obligations pursuant to applicable ISO Tariff provisions and/or any bilateral contracts to supply power to customers.

Critical Path Permit The critical path permit for various IPP and QF technologies are as follows:

For All Non-Thermal Projects and Thermal Projects Exempt from CEC Site Certification:

Geothermal:

County Conditional Use Permit or Special Zone Permit

Biomass:

County Conditional Use Permit or Special Zone Permit, or Air Quality Permit

Wind:

County Conditional Use Permit or Special Zone Permit

Cogeneration:

Air Quality Permit

Hydro:

FERC License or Exemption

For Non-Exempt Thermal Projects Over 50 MW:

California Energy Commission Site Certification

If, for whatever reason, the permit cited above is not applicable to a project, a different critical path permit may be substituted, with PG&E's agreement.

Appendix C Payment Schedule

Applicant shall make the following payments to PG&E for installation of the Interconnection Facilities and Network Upgrade Work on or before the following date: within thirty (30) calendar days of the Effective Date of this Agreement, for initial engineering, design and purchase of long lead-time equipment, and for the remaining equipment and labor required to complete the work. The payment to be made by LECEF shall be an advance payment only, and shall be subject to true-up as provided in paragraph 2 of this Agreement if PG&E's actual total costs are either higher or lower than the total amount paid in advance by Applicant. If it is determined at any time during construction that all or any portion of the Interconnection Facilities or Network Upgrade Work is not needed, PG&E shall take reasonable measures to curtail expenditures that are no longer necessary and to refund unused portions of the advance payments to LECEF.

Pacific Gas & Electric Company

1919 Webster St. First Floor Oakland, CA 94612 Torn Marki Principal Project Manager T&D Project Management (925) 736-3723

March 27, 2002



Mr. Nick Gaglia Calpine LECEF 4160 Dublin Blvd, Dublin, CA 94568-3139

Subject: PG&E 115 kV Interconnection with LECEF

Dear Mr. Gaglia:

This letter responds to your request for PG&E's assessment of (i) the status of our negotiations concerning the agreements necessary to enable LECEF to interconnect with PG&E's electric system, and (ii) the lead times to complete construction of the interconnection facilities

Regarding the former, over the past several weeks, PG&B and LECEF have been negotiating terms for the Generator Special Facilities Agreement ("GSFA") and the Generator Interconnection Agreement ("GIA"). The GSFA currently under negotiation concerns a "temporary" interconnection via a "tap line" that will connect LECEF to the PG&E electric system. The temporary interconnection will be replaced by a permanent interconnection, and certain terms of the current GSFA will need to be amended, once PG&E's construction of the Los Esteros Substation is complete. From PG&E's perspective, to date, the negotiations have been fruitful and the parties have worked hard, and in good faith, to resolve the remaining open issues. Assuming the trend continues, we expect that the parties will conclude their negotiations shortly and execute the agreements in the days immediately thereafter.

Regarding the latter, PG&E is currently doing the engineering and design work for the 115 kV Interconnection with LECEF. Based on data currently available, the interconnection facilities include approximately 2000' of new 115 kV single circuit wood pole line and associated relay and protection changes at PG&B's Trimble and Nortech Substations as well as the associated work at LECEF. Work at the PG&E substations can begin as soon as the GSFA and GIA are executed and PG&E receives payment for the estimated cost. The start of construction of the transmission line is dependent on the CEC approval of LECEF. PG&E will have to file for a Notice to Construct ("NOC") with the CPUC in order to comply with the CPUC General Order 131D once the CEC approves the project. The NOC is expected take approximately 60 calendar days, though it may take longer depending on any public comments that may be received by the CPUC. Construction on the transmission line can start promptly upon receipt of the NOC and is expected to take about two weeks. There could be possible delays as a result of clearance issues at Nortech Substation since its expected that clearances will only be available on the weekends. Therefore the interconnection could be delayed if clearances are not available on a particular weekend due to area electrical loading conditions. In any event we expect to be able to complete the interconnection within a maximum of three months after the CEC approves LECEF. Please note, however, that this timeline is only an estimate based on data currently available. Technical or regulatory issues may cause delays.

Very truly yours,

Tom Marki

Principal Project Manager

cc: Steve Frank Tom Bantz



April 19, 2002

Robert L. Lamkin
Vice President
Los Esteros Critical Energy Facility, LLC c/o Calpine Corporation
4160 Dublin Blvd.
Dublin, CA 94568

Re: Letter Agreement Supplementing, Clarifying, and Modifying the Generator Special Facilities
Agreement between Pacific Gas and Electric Company and Los Esteros Critical Energy
Facility, LLC

Dear Robert L. Lamkin:

Pacific Gas and Electric Company ("PG&E") and Los Esteros Critical Energy Facility, LLC ("LECEF"), (PG&E and LECEF are individually referred to herein as "Party" and collectively referred to as "Parties"), are concurrently executing a Generator Special Facilities Agreement ("GSFA"). The Parties intend that this letter ("Supplemental Letter Agreement") be an integral part of and clarify, expand upon, and, in part, modify the GSFA and the GIA and be included as part of PG&E's filing with the Federal Energy Regulatory Commission ("FERC") pursuant to Section 205 of the Federal Power Act seeking acceptance of the GSFA. This Supplemental Letter Agreement shall become effective upon execution by LECEF ("Effective Date").

- 1. (a) The Special Facilities are described in Exhibit 1 of the GSFA. All such Special Facilities shall be constructed at LECEF's expense. PG&E's service obligations and liability end absolutely at the Point of Interconnection, as defined in the GIA.
 - Also described in Exhibit 1 of Appendix A to the GSFA are the facilities that have been identified by PG&E as necessary to enable the generation from LECEF to be delivered into the grid without interruption ("Network Upgrades"). Although LECEF hereby agrees to fund the identified Network Upgrades in advance of LECEF's commercial operation, LECEF reserves its full rights to challenge in any regulatory, legislative, or judicial forum (1) the classification of the Network Upgrades as "Special Facilities", (2) the allocation to LECEF of all or any cost responsibility for the Network Upgrades, and (3)

- any on-going ownership or other charges for which LECEF may be billed that arise from or are based on either (1) or (2) above.
- (c) For purposes of the GSFA and GIA, the facilities referred to in paragraphs 1(a) and 1(b), above, are termed "Special Facilities"; however, the use of this term is subject to LECEF's reservation of rights in paragraph 1(b).

2. Initial Interconnection Facilities Work

- (a) The Parties agree that the LECEF project will temporarily interconnect with PG&E's electrical system through an approximately 2000 foot temporary 115 kV wood pole line that will connect with the Nortech-Trimble 115 kV circuit ("Initial Interconnection").
- (b) PG&E agrees to design, engineer, procure, install the Initial Interconnection at LECEF's expense. LECEF agrees to provide PG&E with any necessary right of ways for the purpose of constructing the Initial Interconnection.
- (c) The Parties agree that the Initial Interconnection shall be replaced by a permanent connection to the Los Esteros Substation, currently contemplated as part of the Northeast San Jose Transmission Reinforcement Project (this interconnection is referred to herein as the "Permanent Interconnection"), upon PG&E's completion of construction of the Los Esteros Substation. The Parties shall work together in good faith to develop a schedule for transitioning from the Initial Interconnection to the Permanent Interconnection upon completion of the Los Esteros Substation. Notwithstanding the foregoing, in no event shall PG&E remove the Initial Interconnection for the purpose of transitioning to the Permanent Interconnection (i) prior to the availability of the Permanent Interconnection and (ii) without 60 days advance written notice to LECEF.
- (d) Upon abandonment of the Initial Interconnection, LECEF shall pay to PG&E on written demand the estimated removal cost less the estimated salvage value for any Special Facilities associated with the Initial Interconnection which can be removed, all as determined by PG&E in accordance with its standard accounting practices.

3. Permanent Interconnection Facilities Work

(a) At LECEF's expense, PG&E may perform additional studies to determine the interconnection costs to be assessed to LECEF for the Permanent Interconnection facilities.

- Upon completion of any additional studies conducted by PG&E pursuant to (b) paragraph 3(a) above, the Parties agree that Appendix A and Exhibit 1 of the GSFA, which detail the costs of the Initial Interconnection facilities, will be amended, supplemented, and ultimately superseded with a revised Appendix A and Exhibit 1 setting forth the costs associated with the Permanent Interconnection facilities. LECEF shall pay the additional design, construction and installation costs of the facilities necessary for the Permanent Interconnection. LECEF shall pay such costs in accordance with the payment schedule set forth in the revised Appendix A and Exhibit 1. LECEF shall continue to pay the monthly cost of ownership charge associated with the Initial Interconnection until LECEF begins to operate through the Permanent Interconnection, at which time the monthly cost of ownership charge associated with the Initial Interconnection shall be superseded by the monthly cost of ownership charge associated with the Permanent Interconnection. PG&E shall refile the GSFA with the revised Appendix A and Exhibit 1 with the FERC pursuant to section 205 of the Federal Power Act.
- 4. LECEF may terminate this Supplemental Letter Agreement by giving written notice to PG&E at any time; provided, however, that (a) LECEF shall compensate PG&E fully for all reasonable costs incurred by PG&E both up to, and as a result of such termination, and (b) LECEF agrees that any such termination under this paragraph 4 will result in LECEF losing its interconnection queue position. The effectiveness of the provisions of this Supplemental Letter Agreement shall be coterminous with the GSFA and GIA.
- 5. Notwithstanding any other provisions of this Supplemental Letter Agreement, the GSFA, or the GIA, PG&E and LECEF and their respective affiliates retain their full and respective rights under Sections 205 and 206 of the Federal Power Act to file to change or challenge any rate, term or condition in any agreement between them related to LECEF that is or may be on file with the FERC, including, without limitation, the rates or rate methodology contained in this Supplemental Letter Agreement and/or the GSFA.
- 6. (a) The Facilities Cost Report ("FCR") prepared by PG&E for the Los Esteros
 Critical Energy Facility shows that upon transition to the Permanent
 Interconnection, LECEF may cause adverse impacts on PG&E's transmission
 system. LECEF has agreed to mitigate some of the adverse impacts arising out
 of the Permanent Interconnection through the application of the Operating
 Procedures and Limitations set forth in Appendix H of the GIA. Thus, the
 Parties expect that Appendix A to the GSFA for the Permanent Interconnection

may include the Network Upgrades specifically set forth in Appendix H of the GIA.

- (b)(i) Subject to approval by the ISO of the particular Network Upgrades identified in Appendix A to the GSFA for the Initial Interconnection, and to be identified in Appendix A to the GSFA for the Permanent Interconnection, the Parties agree to install the facilities necessary for the Network Upgrades as set forth in this paragraph 6(b) and its subparts. Subject to its reservation of rights in paragraphs 5 and 6(d) of this Supplemental Letter Agreement, LECEF shall fund the costs of any Network Upgrades that may be identified and described in Appendix A to the GSFA for the Permanent Interconnection, but LECEF shall have no responsibility to fund any costs for Network Upgrades not identified in such Appendix A unless LECEF and PG&E agree that such other Network Upgrades is a mutually-acceptable replacement for the Network Upgrades to be identified in Appendix A.
 - (ii) If the FERC subsequently orders that one or more parties other than LECEF are responsible for some or all of the costs of the Network Upgrades, PG&E shall refund to LECEF within thirty (30) calendar days of such FERC order any portion of a payment LECEF previously made to PG&E and for which FERC has ruled LECEF is not responsible. If it is determined at any time during construction that all or any portion of the Network Upgrades is not needed, PG&E shall take reasonable measures to curtail expenditures that are no longer necessary and to refund unused portions of the advance payments to LECEF.
 - (iii) The Parties agree that none of the provisions of this paragraph 6(b) and its subparts may be used by either Party in any manner or forum as a precedent for (i) the classification of the Network Upgrades as Special Facilities; (ii) the appropriate allocation of costs for the Network Upgrades; or (iii) the appropriate means of mitigating system impacts resulting from the interconnection of electric generation facilities to the grid.
 - (c) Notwithstanding the execution of this SLA, the GSFA or the GIA, LECEF reserves any and all rights to contest PG&E's placement of the LECEF Project in PG&E's Generator Interconnection Queue in any regulatory, judicial, or other forum.
 - (d) If at any time PG&E, the California Independent System Operator ("ISO"), its successor agency, or another regulatory agency, determines that any Network Upgrades has become necessary in whole or in part as "Special Facilities" as a

result of the Initial Interconnection of LECEF to the PG&E transmission system, LECEF reserves, and expressly does not waive, its full rights to challenge at the ISO and in any regulatory, legislative or judicial forum (1) the classification of such Network Upgrades as "Special Facilities", (2) the allocation to LECEF of all or any cost responsibility for such Network Upgrades, and (3) any on-going ownership or other charges for which LECEF may be billed that arise from or are based on either (1) or (2), above.

- (e) PG&E agrees that LECEF secured a position in PG&E's generation interconnection queue for the Permanent Interconnection when LECEF submitted its initial interconnection request to PG&E for the Initial Interconnection. Accordingly, PG&E agrees that LECEF need not file a new interconnection request to effect the transition from the Initial Interconnection to the Permanent Interconnection. Instead, the Parties agree that LECEF's position in PG&E's generation interconnection queue for the Permanent Interconnection shall be the same as LECEF's position in PG&E's generation interconnection.
- 7. The Parties agree that by executing this Agreement, neither Party waives any rights or is excused from any obligations that arise as a result of (1) the order issued by the Federal Energy Regulatory Commission ("FERC") on May 16, 2001 in Docket Nos. EL01-47-000 and EL01-47-001, as subsequently modified and/or clarified by the orders on rehearing issued on July 27, 2001 and October 11, 2001 with respect to the "roll-in" of costs associated with the Interconnection Facilities Work or Network Upgrades; or (2) any future order which may be issued by the FERC with respect to the rolling in of costs associated with the Interconnection Facilities Work or Network Upgrades into the transmission owner's rate base.
- 8. The Parties understand and agree that current FERC precedent directs that transmission service credits with interest must be developed and provided to generators who pay for Network Upgrades. PG&E is in the process of developing a mechanism for providing credits to LECEF in accordance with FERC policy and will make a compliance filing with FERC to include such a crediting mechanism.
- 9. The following amends and shall supersede and replace paragraph 11 in the GSFA and such amendment shall be effective retroactive to the date of execution of the GSFA:

Upon termination of the Agreement for any reason:

(a) Applicant shall pay to PG&E on written demand (in addition to all other monies to which PG&E may be legally entitled by virtue of such termination) a facility

Robert L. Lamkin April 19, 2002 Page 6 of 9

termination charge defined as the estimated installed cost, plus the estimated removal cost less the estimated salvage value for any Special Facilities which can be removed, all as determined by PG&E in accordance with its standard accounting practices.

- With respect to any written demand that PG&E shall make to LECEF in (b) accordance with section 11(a), above, the amount of the charge shall be calculated with the principle that LECEF shall not be obligated to pay PG&E more than once for any cost item; and accordingly PG&E shall include in any such written demand an accounting demonstrating that its written demand is not obligating LECEF to pay PG&E more than once for any cost item; and provided that LECEF shall have the right to demonstrate that the amount PG&E has set forth in its written demand includes in whole or in part an item for which LECEF has already paid PG&E. Moreover, and consistent with the preceding sentence, PG&E shall deduct from the facility termination charge the ADVANCE plus the unamortized balance of the EQUIVALENT ONE-TIME CHARGE previously paid, if any. If the ADVANCE paid plus the unamortized balance of the EOUIVALENT ONE-TIME CHARGE, if any, is greater than the facility termination charge, PG&E shall refund the difference, without interest to Applicant.
- (c) In any instance in which PG&E is entitled to remove any portion of any Special Facilities located on Applicant's property, it shall remove all such Special Facilities in a reasonable manner, providing sufficient notice of its intent to remove.
- (d) PG&E may, at its option, alter, rearrange, convey or retain in place any portion of the Special Facilities located on other property off Applicant's premises. Where PG&E retains all or any portion of the Special Facilities in anticipation of providing permanent service to customers of PG&E, PG&E shall make an equitable adjustment to the facility termination charge; provided LECEF shall be provided sufficient information to be able to fully assess whether PG&E has made such an equitable adjustment.
- 10. The Parties agree that the following amends and/or supersedes the GSFA, through additions or modifications to the applicable sections in the GSFA:
 - (a) For purposes of section 2 of the GSFA, PG&E shall perform all work in an efficient and workmanlike manner, consistent with electric utility industry standards. PG&E shall timely notify Applicant upon becoming aware of any

- likely change in the schedule for or scope of work or cost estimates for such work.
- (b) For purposes of section 6 of the GSFA, with respect to PG&E's "reasonable efforts to obtain such rights of way or easements," such "reasonable efforts to obtain" shall be upon commercially reasonable terms.
- (c) For purposes of section 7 of the GSFA, the phrase "delays resulting from PG&E's responsibility to coordinate certain electric interconnections with the California Independent System Operator Corporation or any other cause or condition beyond the control of PG&E," is deleted and replaced with the following: "delays resulting from the failure of the California Independent System Operator Corporation ("ISO") to take any action necessary for PG&E to complete the installation of such Special Facilities, provided that PG&E has made a timely request to the ISO to take such necessary action, or any other cause or condition beyond the control of PG&E,"
- (d) For purposes of section 8 of the GSFA, the phrase "[i]n the event that PG&E is prevented from completing the installation of Special Facilities for reasons beyond its control after twelve (12) month following the date of this Agreement," is deleted and replaced with the following: "In the event that PG&E is prevented from completing the installation of Special Facilities for reasons beyond its control for a period of twelve (12) months after the date of any such occurrence of the event beyond its control,"
- (e) Section 10 of the GSFA, is modified to delete subsection 10(c) which provides as an event upon which the Agreement should cease remaining in full force and effect "[t]he ownership of Special Facilities or any portion thereof is deeded to a public authority." In addition, the last sentence of Section 10 which states that "[e]ither party shall provide the other at least thirty (30) days' written notice of termination and an opportunity to cure before termination becomes effective pursuant to this section." is deleted in its entirety and replaced with the following: "Either party shall provide the other written notice of default pursuant to this section. If the defaulting party does not cure the default within thirty (30) calendar days of receiving a written notice of default, the party not in default may terminate this Agreement upon thirty (30) calendar days' prior written notice."
- 11. This Supplemental Letter Agreement, the GSFA, and the GIA shall be filed by PG&E with FERC and any other regulatory agency, including the CPUC, having jurisdiction over the same.

- 12. This Supplemental Letter Agreement, together with the GSFA and GIA, sets forth the entire agreement of the Parties with respect to all matters addressed herein and, with the exception of the GSFA and GIA, supersedes all prior statements and agreements, oral and written, which in any way relate to such matters. Further, this Supplemental Letter Agreement may be amended or modified only by a subsequent writing executed by both Parties hereto.
- 13. If a dispute arises between the Parties regarding any matter relating to the GSFA or this Supplemental Letter Agreement, the following procedure must be followed prior to the commencement by either Party of any legal or regulatory action: representatives of both Parties shall meet within two weeks of a notice by either Party of a dispute, and shall attempt to negotiate a resolution to the dispute. The Parties may thereafter agree to extend this two-week period and to engage in non-binding mediation. Only after all such efforts have failed to resolve the dispute may either Party seek recourse to another forum.
- 14. PG&E may request LECEF to provide or establish credit sufficient, in PG&E's sole judgment, to support fully LECEF's obligations hereunder. LECEF will provide or establish such credit within thirty (30) calendar days of receiving PG&E's written request for credit; provided, however, that notwithstanding LECEF's provision of credit pursuant to this paragraph 14, LECEF reserves its right to contest the need for, amount, form and/or duration of any such credit in any proceeding or forum. If LECEF transfers ownership of all or any portion of its rights to use or own the LECEF generating facility identified under this Supplemental Letter Agreement to any third party, PG&E may require that the third party shall, as a condition of the effectiveness of such transfer, establish credit with PG&E.
- 15. The assignment provisions of section 18 of the GSFA shall also apply to this Supplemental Letter Agreement. Accordingly, any assignment effective in accordance with section 18 of the GSFA shall also constitute an effective assignment of this Supplemental Letter Agreement.
- 16. The Parties agree that the execution of this Supplemental Letter Agreement, the execution of the GSFA, and the discussions or documents exchanged between them in connection with the preparation of this Supplemental Letter Agreement and/or the failure of this Supplemental Letter Agreement and/or the GSFA to address any issue, whether or not previously discussed between the Parties, shall not be used by either of them as any acquiescence, waiver, course of performance, precedent or agreement as to any principle or issue between PG&E and LECEF or any other affiliate of Calpine Corporation with respect to any interconnection arrangements for any projects other than the project covered by these agreements, including without limitation, provisions

Robert L. Lamkin April 19, 2002 Page 9 of 9

regarding the payment of ITCC.

If these terms are acceptable to LECEF, please evidence LECEF's acceptance by signing each original of this Supplemental Letter Agreement in the place provided below and returning one signed original letter to me. My signature constitutes PG&E's acceptance of the terms contained herein.

Two copies of this letter are provided to enable each Party to have an original of this Supplemental Letter Agreement.

Silicolory,	÷
Pacific Ga	s and Electric Company
Los Estere	os Critical Energy Facility, LLC concurs:
By:	Rome
Name:	Robert L. Lamkin Vice President
Title:	
Date:	4/19/02



Generator Interconnection Agreement

between

Pacific Gas and Electric Company

and

Los Esteros Critical Energy Facility, LLC

Table of Contents

1 .	PREA	MBLE	1
2	RECI	TALS	1
3	AGRI	BEMENT	2
_			
4	DEFI	NITIONS	
	4.1	Agreement	2
	4.2	Ancillary Services	2
	4.3	Applicable Reliability Criteria	2
	4.4	Business Day	
	4.5	Clearance Point	
	4.6	Cost	
	4.7	CPUC	
	4.8	Designated PG&E Electric Control Center	2
	4.9	Disconnect Device	3
	4.10	Emergency	3
	4.11	FPA	3
	4.12	FERC	
	4.13	Force Majeure	3
	4.14	Generating Facility	3
	4.15	Generator Special Facilities Agreement	3
,	4.16	Good Utility Practice	3
	4.17	Governmental Authority	4
	4.18	Interconnection Capacity	
	4.19	Interconnection Facilities	
	4.20	Interconnection Service	
	4.21	ISO	
	4.22	ISO Controlled Grid.	
	4.23	ISO Tariff	
	4.24	NERC.	
	4.25	NRC	
	4.26	Non-Test	
	4.27	Participating Generator	
		Participating Generating Agreement	
	4.28	Participating TO	
	4.29	• •	
	4.30	Person PG&E Electric System	
	4.31		
	4.32	PG&E Electric System Integrity	
	4.33	PG&E Interconnection Handbook	
	4.34	PG&E Wholesale Distribution Tariff	
	4.35	Point of Interconnection	
	4.36	Reliability Management System Agreement	
	4.37	Responsible Meter Party	
	4.38	Scheduling Coordinator	
	4.39	Significant Regulatory Change	
	4.40	System Emergency	
	4.41	TCA	6

			6
	4.42 T	hird Party	7
	4.43 T	O Tariff	7
	4.44 V	VSCC	′
		AND TERMINATION	7
5	TERM	AND TERMINATION	7
	5.1	Cerm	7
	5.2	Termination	
			8
6	PG&E	S RIGHTS AND OBLIGATIONS	. 8
	6.1	Limited Responsibility to Accept Energy Into the PG&E Electric System.	8
	6.2	No Facility Preservation Obligation After Termination	9
	6.3	Right to Disconnect the Generating Facility	9
	6.4	Right to Interrupt Interconnection Service	10
	6.5	Provision Applicable if PG&E and Applicant are Affiliates	11
	6.6	Establishing Interconnection Capacity	••
		ICANT'S RIGHTS AND OBLIGATIONS	11
7	APPL	Applicant's Right to Deliver Power to the PG&E Electric System	11
	7.1	Applicant's Right to Deliver Power to the Power Electric System	11
	7.2	Generator Must Meet Standards	12
	7.3	No Parallel Operation Without Approval Applicant Must Implement Operating Guidelines	.13
	7.4	Applicant Must Implement Operating Guidelines Obligation to Maintain Power Factor	.13
	7.5	Obligation to Maintain Power Factor Emergency Disconnection	.13
	7.6	Emergency Disconnection	.13
	7.7	Routine Tests and Non-Tests	.13
	7.8	Obligation to Maintain Insurance.	.13
	7.9	New or Modified Interconnections	.13
	7.10	New or Modified Interconnections	.14
	7.11	Conflicting Instructions	.14
	7.12	Participating Generating Agreement	
	ODER	ATING COMMUNICATIONS AND NOTIFICATIONS	.14
8		D. Carlotte J. D. and a controlling of	. 14
	8.1	Communication with the Designated PG&E Electric Control Center	.14
	8.2 8.3	O-1 Cinsting	· LJ
	8.4	Telemetering Peguirements	.13
	8.5	Operating Agreements	.15
	•		
9	OPE	RATION AND MAINTENANCE OF GENERATING FACILITY AND GENERATOR	
	STEP	TID EACII ITIES	
	9.1	Device Factor and Voltage Instructions	
	9.2	Doily Operating Report and Telemetering Information	13
	9.3	Unattended Operation	16
	9.4	Maintenance Notice	16
	9.5	Maintenance on Facilities Energized by PG&E	10
	9.6	PG&E Maintenance on Applicant's Facilities	17
10	MET	ERING	. I
	10.1	Delivery Meters	
	10.2	Power Supply Metering Requirements	
	10.3	Requirements for Meters and Meter Maintenance	1
	10.4	Meter Access	1

11	MAINTENANCE OF INTERCONNECTION EQUIPMENT OWNED BY THE APPLICANT 18				
		difications to the Interconnection or Protection Devices			
	11.2 Tes	sting of Interconnection Facilities	18		
	11.3 Rel	lay Requirements	18		
12	REFEREN	NCES	18		
	12.1 PG	&E Utility Operations Standard S1466	18		
	12.2 PG	&E Utility Operations Standard S1403	18		
13	SIGNIFIC	CANT REGULATORY CHANGE	18		
	13.1 Au	tomatic Conformance	18		
	13.2 No	tification	18		
	13.3 Ch	ange in Functions or Scope	19		
	13.4 An	nendment of Agreement	19		
14	BILLING	S AND PAYMENT	19		
	14.1 Ma	aintenance Payments	19		
	14.2 Pay	yment Due Date	20		
	14.3 Est	timated Bills	20		
	14.4 Dis	sputed Bills	20		
	14.5 Ad	ljusted Bills	20		
	14.6 Int	erest on Adjusted Bills	20		
	14.7 Int	erest on Unpaid Bills	20		
	14.8 Pay	yment on Disputed Bills	21		
		funds			
	14.10 Fai	ilure to Make Payment	21		
15	GENER!	AL PROVISIONS	21		
	15.1 Ap	opendices Included	21		
	15.2 Ac	counting	22		
	15.3 Ad	iverse Determination or Expansion of Obligations	22		
	15.4 As	ssignments	22		
	15.5 Ca	aptions	23		
	15.6 Co	onstruction of the Agreement	23		
	15.7 Co	ontrol and Ownership of Facilities	23		
		poperation and Right of Access and Inspection			
		efault			
•	15.10 Di	ispute Resolution	23		
		overning Law			
	15.12 Inc	demnity	24		
		terpretation			
	15.14 Ju	dgments and Determinations	25		
	15.15 Lia	ability	25		
		[odification			
		o Dedication of Facilities			
	15.18 No	o Obligation to Offer Same Service To Others	26		
	15.19 No	o Precedent	26		
	15.20 No	o Transmission, Distribution or Ancillary Services Provided	26		
	15.21 No	otices	26		
	15.22 No	on-waiver	27		
	15.23 Re	eservation of Rights	27		

		11.1	
	15.24	Rules and Regulations27	
	1505	GLile.	
	15.26	Severability	
,			
16	EXEC	UTION29	
		1	
APPI	ENDIX	A	
	A .1	General Liability Coverage	
	A.2	Additional Insurance Provisions	
A DDI	· ENIDTY	В	L
APTI	אימאוי	Destina Tost Guidalines	L
	B.1	Non-Test Procedures	L
		Non-Test Flocedures	
A DD	ENIDIY	C	Ĺ
ALF I	C.1	Nametrotion and Mediation	
	C.1	Technical Arbitration	1
	C.2	A distriction	ı
	C.3 C.4	Procedures	2
		TT and Decision	_
	C.5	Expenses	2
	C.6		
4 7070		(D	1
APP	שעאם D.1	Transmission Line Selector Switches	1
	D.1 D.2	Standby Generator	1
	D.2	Statitudy Conceasor	_
A DE	בוחואם	XE	1
WII	E.1		
	E.2	Interconnection with the PG&E Electric System	1
ΔPI	PENDI	X F	1
AP	PENDI	X G	1
	G.1	X G Definitions	1
	G.2	Reliability Management System	•
		X H	1
AP:	PENDI	X H	

Generator Interconnection Agreement

This Agreement provides for the interconnection and parallel operations of nonutility-owned generation connected to the PG&E Electric System at either transmission (60 kV and above) or distribution (below 60 kV) voltage and applies only to those Generating Facilities that are, or intend to become, a Participating Generator pursuant to the ISO Tariff.

1 PREAMBLE

THIS AGREEMENT, between Los Esteros Critical Energy Facility, LLC (Applicant) and PACIFIC GAS AND ELECTRIC COMPANY (PG&E), hereinafter sometimes referred to individually as "Party" or collectively as "Parties", is as follows:

2 RECITALS

- 2.1 Whereas, PG&E is a public utility engaged, among other things, in the business of owning and operating an electric system consisting of transmission and distribution facilities in Northern California;
- 2.2 Whereas, Applicant has (i) purchased or intends to purchase a Generating Facility from PG&E; or (ii) owns a Generating Facility that sells or sold power to PG&E under a Power Purchase Agreement and intends to convert or has converted the status of such Generating Facility to sell all such power on the wholesale market; or (iii) has constructed or intends to construct, a new or expanded Generating Facility. Applicant intends to operate the Generating Facility, which is described in Appendix E, for the purpose of selling electric power at wholesale and has requested permission from PG&E to interconnect such Generating Facility in order to operate it in parallel with the PG&E Electric System;
- 2.3 Whereas, Applicant intends to become a Participating Generator pursuant to the requirements of the ISO Tariff;
- 2.4 Whereas, PG&E is willing to permit such interconnection and parallel operation under the terms and conditions contained in this Agreement;
- 2.5 Whereas, Applicant understands that this Agreement does not provide any transmission service, distribution service, or Ancillary Services as such services, if necessary, will be provided under separate arrangements with PG&E, the ISO, or Third Parties;
- 2.6 Whereas, this Agreement obligates Applicants to design new Generating Facilities or additions to existing Generating Facilities consistent with Good Utility Practice;
- 2.7 Whereas, this Agreement obligates Applicant to operate and maintain its Generating Facility consistent with Good Utility Practice;
- 2.8 Whereas, this Agreement establishes interconnection and operating responsibilities and associated procedures for communications between Applicant and PG&E Electric System operators. The Agreement also establishes procedures for safe work practices on the PG&E Electric System and routine test procedures;
- 2.9 Whereas Applicant understands that it will be subject to the ISO Tariff and protocols and operating procedures thereunder and that it is responsible for making any arrangements necessary with the ISO.

3 AGREEMENT

Now, therefore, in consideration of the mutual covenants herein set forth, the Parties agree as follows:

4 DEFINITIONS

The following terms, when used in this Agreement with the initial letters capitalized, whether in the singular, plural or possessive, shall have the meanings indicated below. Some terms are defined by reference to definitions in the currently effective Appendix A, Master Definitions Supplement, to the ISO Tariff.

4.1 Agreement

This Generator Interconnection Agreement between PG&E and Applicant and its Appendices, as it may be amended.

4.2 Ancillary Services

Regulation, Spinning Reserve, Non-Spinning Reserve, Replacement Reserve, Voltage Support and Black Start together with such other interconnected operation services as the ISO may develop to support the transmission of energy from generation resources to loads while maintaining reliable operation of the ISO Controlled Grid in accordance with Good Utility Practice.

4.3 Applicable Reliability Criteria

The reliability standards established by (1) the Western Systems Coordinating Council or its successor, (2) the North American Electric Reliability Council, (3) the ISO, and (4) the Nuclear Regulatory Commission that are relevant to the PG&E Electric System, as amended from time to time.

4.4 Business Day

A day on which banks are open to conduct general banking business in California.

4.5 Clearance Point

The point(s) that electrically isolate PG&E's equipment from possible sources of energy from the Generating Facility. Clearance Points may be requested by PG&E from time to time as provided in Sections 7.7 and 9.5, so that work can be safely performed on the PG&E Electric System. The Clearance Point is normally located at the Disconnect Device.

4.6 Cost

All just, reasonable, necessary and prudent expenses or capital expenditures associated with PG&E's transmission and interconnection facilities, including operation, maintenance, engineering study, adverse impact identification, adverse impact mitigation, contract modification, administrative and general expenses, taxes, depreciation, and costs of capital as determined in accordance with the FERC Uniform System of Accounts as such may be amended or superseded from time to time. The appropriate components of the Cost, as defined herein, shall be applied for the particular transaction performed.

4.7 CPUC

The California Public Utilities Commission or its successor.

4.8 Designated PG&E Electric Control Center

The PG&E location, identified in Section 8.1 of this Agreement, with operational jurisdiction

over the Generating Facility.

4.9 Disconnect Device

A device used to isolate the Generating Facility from the PG&E Electric System and normally located adjacent to the Point of Interconnection.

4.10 Emergency

An abnormal condition or situation that adversely affects, or potentially may adversely affect, the PG&E Electric System Integrity and which requires immediate automatic or manual action to prevent or limit such condition or situation. Such an event may result from, but is not limited to, a System Emergency.

4.11 FPA

The Federal Power Act as it may be amended or superseded.

4.12 FERC

The Federal Energy Regulatory Commission or its regulatory successor.

4.13 Force Majeure

Any occurrence beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure which causes the Party to be unable to perform part or all of its obligations, which by exercise of due foresight such Party could not reasonably have been expected to avoid and which the Party is unable to overcome by the exercise of due diligence. Such an occurrence may include, but is not limited to, act of God, labor disputes, sudden actions of the elements, actions or inactions by federal, state, or municipal agencies, and actions or inactions of legislative, judicial, or regulatory agencies of competent jurisdiction.

4.14 Generating Facility

The Generating Unit described in Appendix E and associated facilities.

4.15 Generator Special Facilities Agreement

A separate agreement between PG&E and Applicant, specifying facilities, owned by PG&E, that PG&E determines are necessary for Applicant's Generation Facility to interconnect with PG&E and allow the Generating Facility to deliver power up to the Interconnection Capacity into the PG&E Electric System. For new projects, the Generator Special Facilities Agreement also includes certain project milestones that must be met before this Agreement can be executed. PG&E shall have the right to terminate this Agreement in the event that the Generator Special Facilities Agreement terminates pursuant to the terms and conditions of the Generator Special Facilities Agreement.

4.16 Good Utility Practice

Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

4.17 Governmental Authority

Any federal, state, local or other governmental, regulatory or administrative agency, governmental commission, department, board, subdivision, court, tribunal, or other governmental arbitrator, arbitral body or other authority, but excluding Applicant and any subsequent owner of the Generating Facility (if Applicant or any subsequent owner is otherwise a Governmental Authority under this definition).

4.18 Interconnection Capacity

The contractual electric capacity in kW at the Point of Interconnection up to which the Generating Facility may deliver electrical power into the PG&E Electric System. The Interconnection Capacity for both new and existing projects is specified in Appendix E.2.2.

4.19 Interconnection Facilities

All means required, and apparatus installed as determined by PG&E, to safely interconnect a Generating Facility, or an Applicant-owned generation tie line with the PG&E Electric System. Interconnection Facilities may include, but are not limited to, the Disconnect Device, connection, step-up transformers and related equipment, switching, metering, and communications equipment, as well as any necessary additions, modifications and reinforcements to the PG&E Electric System at the Point of Interconnection necessitated as a result of interconnecting the Generating Facility to the PG&E Electric System. Interconnection Facilities also include control and safety equipment to protect (i) the PG&E Electric System and its customers from faults occurring at the Generating Facility; and (ii) the Generating Facility from faults occurring on the PG&E Electric System or on the electric system of others to which the PG&E Electric System is directly or indirectly connected.

4.20 Interconnection Service

The term "Interconnection Service" as used in this Agreement shall not refer to any right to transmit power over PG&E's transmission and/or distribution system. Instead, Interconnection Service refers to the Applicant's ability to deliver power into the PG&E Electric System at the Point of Interconnection under the terms and conditions of this Agreement when the Generating Facility is interconnected with the PG&E Electric System, subject to Section 6.4.

4.21 ISO

The California Independent System Operator Corporation or its successor including any Regional Transmission Organization, that exercises operational authority over the PG&E transmission system.

4.22 ISO Controlled Grid

The system of transmission lines and associated facilities of the Participating TOs that have been placed under the ISO's Operational Control.

4.23 ISO Tariff

The currently effective ISO Operating Agreement and Tariff, dated March 31, 1998, as approved by FERC and as it may be modified or superseded from time to time, or any successor tariff of any Independent System Operator or Regional Transmission Organization approved by FERC that has operational authority over the PG&E transmission system.

4.24 NERC

The North American Electric Reliability Council, or its successor.

4.25 NRC

The Nuclear Regulatory Commission or its successor.

4.26 Non-Test

A procedure used by PG&E in connection with work on a live electric line or near an energized circuit. In a Non-Test, PG&E will request that Applicant contact the Designated PG&E Electric Control Center before re-energizing a circuit following an automatic trip.

4.27 Participating Generator

A Generator or other seller of Energy or Ancillary Services through a Scheduling Coordinator over the ISO Controlled Grid from a Generating Unit with a rated capacity of 1 MW or greater, or from a Generating Unit providing Ancillary Services and/or Imbalance Energy through an aggregation arrangement approved by the ISO, which has undertaken to be bound by the terms of the ISO Tariff, in the case of a Generator through a Participating Generating Agreement.

4.28 Participating Generating Agreement

An agreement between Applicant and the ISO pursuant to which Applicant agrees to be bound by the terms of the ISO Tariff.

4.29 Participating TO

A transmission owner that has placed its transmission assets under the ISO's operational control pursuant to a transmission control agreement.

4.30 Person

An individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Authority.

4.31 PG&E Electric System

All properties and other assets, now or hereafter existing, which are owned or controlled by PG&E or its successor(s), and used for or directly associated with the generation, transmission, transformation, distribution or sale of electric power, including all additions, extensions, expansions, and improvements thereto, but excluding the properties and assets of subsidiaries of PG&E.

4.32 PG&E Electric System Integrity

The state of operation of the PG&E Electric System in a manner that is deemed by PG&E in its sole discretion necessary or desirable to minimize the risk of injury to persons and/or property and enable PG&E to provide adequate and reliable electric service to its customers.

4.33 PG&E Interconnection Handbook

A handbook, developed by PG&E pursuant to TCA Section 10.3.1, describing technical requirements for wholesale generators and loads connected to the PG&E Electric System. The handbook applicable to the Generating Facility shall be the handbook in effect as of the effective date of this Agreement. PG&E's standards contained in the handbook shall be deemed consistent with Good Utility Practice and Applicable Reliability Criteria. Where there is conflict or inconsistency with the terms in this Agreement and the PG&E Interconnection Handbook, the terms in this Agreement shall apply.

4.34 PG&E Wholesale Distribution Tariff

The PG&E Wholesale Distribution Tariff, effective March 31, 1998, as it may be modified or superseded from time to time. The PG&E Wholesale Distribution Tariff applies to Generating Facilities connected to the PG&E Electric System at distribution voltages.

4.35 Point of Interconnection

The point where the electrical conductors from the Generating Facility contact the PG&E Electric System. Generally, a Generating Facility will have a single Point of Interconnection.

4.36 Reliability Management System Agreement

The Reliability Management System (RMS) Agreement between the WSCC and PG&E, executed on June 18, 1999, that requires PG&E to include the terms and conditions of Appendix A of the RMS Agreement in any new interconnection agreement. Appendix A of the RMS Agreement is included as Appendix G of this Agreement.

4.37 Responsible Meter Party

The Party having the responsibility for providing, installing, owning, operating, testing, servicing and maintaining meters and associated recording or telemetering equipment at each Point of Interconnection. Currently the Responsible Meter Party is Applicant for transmission interconnections and PG&E for distribution interconnections.

4.38 Scheduling Coordinator

An entity certified by the ISO for purposes of undertaking scheduling coordination functions.

4.39 Significant Regulatory Change

A Significant Regulatory Change occurs when the FERC, the CPUC, the California Energy Commission, the California Legislature, the executive of a state or federal government, or the United States Congress issues an order or decision or adopts or modifies a tariff, or enacts a law that substantially prevents either Party from performing its functions under this Agreement.

4.40 System Emergency

Conditions beyond the normal control of PG&E or the ISO that affect the ability of PG&E and the ISO control area to function normally including any abnormal system condition which requires immediate manual or automatic action to prevent loss of load, equipment damage, or tripping of system elements which might result in cascading outages or to restore system operation to meet the minimum operating reliability criteria.

4.41 TCA

The Transmission Control Agreement, between the ISO and Participating TOs establishing the terms and conditions under which each Participating TO will discharge its respective duties and responsibilities, as may be modified from time to time. PG&E is a Participating TO and has entered into a TCA with the ISO. To the extent that functions assumed by PG&E under the TCA are later assigned to the ISO, references to such functions being performed pursuant to the TCA shall be deemed to be references to the ISO Tariff.

4.42 Third Party

A Person other than PG&E or Applicant.

4.43 TO Tariff

PG&E's FERC Electric Tariff, as it may be modified from time to time or superseded. To the extent obligations or tasks performed by PG&E under the PG&E TO Tariff are later assigned or transferred to, or undertaken with PG&E's consent by, the ISO, reference to such obligations or tasks being performed pursuant to the PG&E TO Tariff shall be deemed references to the ISO Tariff. To the extent relevant, this includes PG&E's Wholesale Distribution Tariff

4.44 WSCC

The Western Systems Coordinating Council, or its successor (including the Western Electricity Coordinating Council).

5 TERM AND TERMINATION

5.1 Term

The Parties shall be bound by the terms of this Agreement upon its execution by both Parties. This Agreement shall be in effect on the latest of the date on which Applicant operates its Generating Facility in parallel with PG&E or the date on which FERC accepts this Agreement for filing and permits it to be placed into effect without material change or material new condition unacceptable to either Party. When it becomes effective, this Agreement will remain in effect for an initial term of twenty (20) years from the date of its completed execution.

5.1.1 Successor Agreement

At the request of either Party, the Parties shall, provided, this Agreement has not otherwise already terminated, meet no later than one (1) year prior to the expected expiration of this Agreement to discuss renewal of this Agreement or to negotiate a reasonable successor agreement; provided, that nothing herein commits either Party to enter into any renewal or successor agreement.

5.2 Termination

- 5.2.1 PG&E shall have the right to terminate this Agreement pursuant to Sections 6.3.1 and 15.9. In addition, PG&E shall have the right to terminate this Agreement in the event that the Generator Special Facilities Agreement, if one is required, is terminated as a result of a breach by Applicant. Nothing in this section shall be deemed to limit PG&E's right to make changes pursuant to section 15.23.1. Applicant shall have the right to terminate this Agreement upon sixty (60) days written notice to PG&E.
- 5.2.2 Upon termination of this Agreement, all rights Applicant shall have under this Agreement for the Generation Facility to be interconnected to the PG&E Electric System shall cease and Applicant shall claim no further right to have the Generating Facility connected to the PG&E Electric System by reason of this Agreement. The provisions of this Section 5.2.2 however shall not be construed as a bar to assertion by Applicant of any rights it may have apart from this Agreement to remain interconnected with PG&E following termination of this Agreement, pursuant to any applicable law or regulation, independent and exclusive of this Agreement. Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all applicable laws and regulations applicable to such termination, including the filing with the FERC of a notice of termination of this Agreement, if applicable, which notice has been accepted for filing with the FERC.

6 PG&E'S RIGHTS AND OBLIGATIONS

6.1 Limited Responsibility to Accept Energy Into the PG&E Electric System

- 6.1.1 The intent and purpose of this Agreement is to provide only for the interconnection and parallel operation of the Generating Facility with the PG&E Electric System, including the establishment of the Interconnection Capacity and rules governing the interconnected operations in order to promote safety and reliability.
- 6.1.2 PG&E shall not be obligated to accept electric energy produced by the Generating Facility into the PG&E Electric System unless separate arrangements have been made in accordance with the ISO Tariff for the transmission service needed to transfer that energy from the Point of Interconnection to where it is to be delivered. In the event that such transmission arrangements have been made, PG&E shall not be obligated to accept electric energy at the Point of Interconnection in excess of the Interconnection Capacity specified in Appendix E.2.2 and delivered to PG&E in accordance with this Agreement.
- 6.1.3 Nothing in this Agreement shall be deemed either expressly or implied to obligate PG&E to provide or make available any electric transmission or distribution service for the transport of electric energy from the Generating Facility.
- 6.1.4 Applicant understands that PG&E is subject to the ISO Tariff and to the TCA which it has entered into with the ISO and that, as a result, PG&E cannot arrange to provide transmission services for Applicant. Instead, transmission service must be arranged either by Applicant or a third party either under existing transmission agreements or under new transmission arrangements with the ISO.

6.1.5 Long Term Shutdown

In the event that the Generating Facility is shut down, or partially shutdown, for a period of six (6) months or more for any reason, the Parties, at either Party's request, shall meet to determine on what date ("Restoration Date") the Generating Facility may reasonably be expected to resume full power production if Applicant uses due diligence in curing whatever problems exist. If the Parties cannot agree on such a Restoration Date, the Restoration Date, at either Party's request, shall be determined by dispute resolution pursuant to Section 15.10. Applicant must obtain PG&E's approval pursuant to Section 7.3 prior to resuming normal operations.

6.1.5.1 Right to Reduce Interconnection Capacity

If the Restoration Date, determined by either mutual agreement or dispute resolution pursuant to Section 6.1.5, is greater than eighteen (18) months from the date the Generating Facility is initially shut down or partially shutdown or if the Restoration Date is less than eighteen (18) months but restoration has not occurred within the eighteen (18) month period, PG&E shall have the right to reduce the Interconnection Capacity to a capacity value that reflects the then-current generating capability of the Generating Facility. However if Applicant is making commercially reasonable efforts to resume full power production as quickly as possible, PG&E shall not reduce the Interconnection Capacity under this Section 6.1.5.1. Following a reduction of Interconnection Capacity, any subsequent increase of Interconnection Capacity shall be established pursuant to the applicable provisions of the ISO Tariff and TO Tariff.

6.2 No Facility Preservation Obligation After Termination

After termination of this Agreement, PG&E shall have no obligation under this Agreement to remain interconnected with Applicant's Generating Facility. Any subsequent reconnection of the Generating Facility to the PG&E Electric System shall be governed by the laws and regulations governing electric utility interconnection at that time.

6.3 Right to Disconnect the Generating Facility

6.3.1 Applicant's Failure to Meet Standards

PG&E may disconnect the Generating Facility from the PG&E Electric System if the Generating Facility fails to meet the requirements set forth in this Agreement. Except as described in Section 6.3.1.1, prior to such disconnection PG&E shall provide written notice to Applicant detailing Applicant's failure to adhere to such requirements and provide Applicant thirty (30) calendar days to correct such deficiency. PG&E shall not disconnect the Generation Facility if Applicant corrects the deficiencies described in the written notice within thirty (30) calendar days or such other time period as the Parties may agree. PG&E reserves the right to terminate this Agreement if PG&E disconnects the Generating Facility under this Section 6.3.

6.3.1.1 Immediate Disconnection

PG&E reserves the right to immediately disconnect the Generating Facility if such deficiencies, as determined by PG&E or the ISO, could be expected to have a material adverse affect on the PG&E Electric System Integrity, endanger the health or safety of the public or any PG&E employee, or cause material damage to the PG&E Electric System or a third party.

6.3.2 Right to Inspect Applicant's Facilities

PG&E shall have the right to enter Applicant's premises at any reasonable times for inspection of Applicant's operations logs and control, protective and safety devices associated with the interconnection of the Generating Facility to the PG&E Electric System; provided, PG&E gives Applicant reasonable notice prior to commencing such an inspection. Upon receiving notice of an inspection from PG&E, Applicant shall provide PG&E with Applicant's written safety, security and operating conventions, protocols and practices. While on Applicant's premises, PG&E shall comply with Applicant's written safety, security and operating conventions, protocols and practices in force on the date of the inspection; provided, that Applicant has provided PG&E with such written safety, security and operating conventions, protocols and practices. If PG&E determines that a hazardous condition exists and immediate action is necessary to protect persons, PG&E's facilities or other customers' facilities from damage or interference caused by the Generating Facility, then PG&E may immediately disconnect the Generating Facility from the PG&E Electric System.

6.4 Right to Interrupt Interconnection Service

6.4.1 Unscheduled Interruptions

PG&E may temporarily interrupt or reduce Interconnection Service to the Generating Facility, or temporarily separate the PG&E Electric System from the Generating Facility, if PG&E determines at any time that: (i) an Emergency condition exists; or (ii) the action is necessary or desirable to prevent a hazard to life or property; or (iii) the operation of the PG&E Electric System is suspended, interrupted or interfered with as a result of Force Majeure; or (iv) at the instruction of the ISO in accordance with the TCA. In the event of such interruption or reduction in Interconnection Service, PG&E shall restore full Interconnection Service on a basis comparable to the restoration of other public service and safety facilities, and, in any event, as directed by the authorized emergency response officials. Should PG&E determine that such interruption or reduction in service will be of a prolonged nature, the PG&E and Applicant shall confer and attempt to agree on the time by which full service can be restored.

6.4.2 Interruption by Protective Devices

PG&E utilizes automatic protective devices in order to assist in maintaining the integrity and reliability of the PG&E Electric System and to protect its customers from damage, injury or prolonged outages. Interconnection Service on the PG&E Electric System is subject to interruption in the event of operation of such devices. In the event of such interruption, Interconnection Service will be restored

consistent with Good Utility Practice.

6.4.3 Maintenance Interruptions

6.4.3.1 PG&E may, with authorization of the ISO, interrupt Interconnection Service to the Generating Facility to perform necessary maintenance on the PG&E Electric System; provided, that such interruptions are consistent with Good Utility Practice. PG&E shall coordinate such maintenance interruptions with Applicant and shall provide Applicant with as much advance notice as possible but in no event shall the notice be less than four (4) Business Days except where PG&E determines an Emergency exists or may exist which requires quicker action to correct. Applicant will adjust plant output to levels specified by the ISO to preserve local transmission reliability during this maintenance work. This output adjustment will be made on a prescheduled basis.

6.4.3.2 PG&E normally limits maintenance interruptions to business hours on a Business Day, between 8:00 AM and 5:00 PM. In the event that Applicant desires the proposed maintenance interruption to occur during non-business hours, PG&E reserves the right to charge Applicant the additional Cost for work performed. PG&E will provide Applicant with an estimate of the additional Cost and if Applicant still desires the work to be performed during non-normal business hours and PG&E does perform the work, PG&E shall charge Applicant the actual additional Costs of the work, the amount of which shall not exceed the cost estimate.

6.4.4 Coordination of Construction Interruptions

6.4.4.1 When Applicant submits its quarterly outage reports to the ISO in accordance with the ISO Tariff, Applicant shall provide a copy of such reports to PG&E in order to facilitate outage coordination. If Applicant is not required to submit quarterly outage reports to the ISO, then the Parties shall share outage plans quarterly, or at other intervals as the Parties may agree, to facilitate outage coordination. Such quarterly outage reports shall be treated as Confidential Information under this Agreement.

6.4.4.2 When PG&E submits its equipment and construction outage reports to the ISO in accordance with the ISO Tariff, PG&E shall provide a copy of such reports regarding outages that could impact Applicant's facilities to Applicant in order to facilitate outage coordination, to the extent permitted by Section 6.5 of this Agreement regarding communications between affiliates; provided, if Applicant is interconnected to PG&E's distribution system, PG&E shall provide Applicant with as much notice as is reasonably practicable of equipment and construction outages that could impact Applicant's facilities. Such reports shall be treated as Confidential Information under this Agreement. PG&E also shall, to the extent permitted under Section 6.5, provide Applicant with a copy of any request submitted to the ISO for authorization to interrupt service that could impact Applicant's facilities at the same time that such requests are submitted to the ISO.

6.4.4.3 Applicant and PG&E shall comply with applicable ISO requirements for approving equipment and construction outages and coordinating such outages between Applicant and PG&E. Applicant will adjust its plant output to levels specified by the ISO to preserve local transmission reliability during approved equipment and construction outages; provided, if Applicant is interconnected to PG&E's distribution system, then Applicant will adjust its plant output to the levels specified by PG&E during approved equipment and construction outages. This output adjustment will be made on a prescheduled basis.

6.5 Provision Applicable if PG&E and Applicant are Affiliates

Notwithstanding anything to the contrary contained in this Section 6 or otherwise in this Agreement, if PG&E and Applicant are affiliates within the scope and terms of FERC Orders No. 888, 888-A, 889, and 889-A, and regulations thereunder as they may be amended or superseded, notwithstanding anything to the contrary contained in this Section 6 or otherwise in this Agreement, PG&E shall not provide Applicant access to any information about PG&E's transmission system that is not available to PG&E's open

access transmission customers, nor shall PG&E provide Applicant any wholesale market information via any shared telecommunications equipment or services.

6.6 Establishing Interconnection Capacity

For existing projects, the Interconnection Capacity is normally set equal to the maximum kW output of the Generating Facility. For new projects or increases in existing projects, the Interconnection Capacity is established through technical studies conducted by PG&E pursuant to ISO Tariff Section 5.7.1. In cases where multiple Generating Facilities are connected to a non PG&E-owned generation tie line that is connected to the PG&E Electric System, a separate Interconnection Capacity is established for each Generating Facility. Interconnection Capacity shall be specified in Appendix E.2.2.

7 APPLICANT'S RIGHTS AND OBLIGATIONS

7.1 Applicant's Right to Deliver Power to the PG&E Electric System

Applicant shall have the right to deliver power from the Generating Facility into the PG&E Electric System; provided, at no time shall Applicant 1) deliver power at a rate that exceeds the Interconnection Capacity specified in Appendix E, 2) deliver power into the PG&E Electric System unless it has arranged for transmission service as provided in Section 6.1.2, and 3) operate the Generating Facility in a manner that is inconsistent with Section 5.1 of the ISO Tariff.

7.1.1 Consequences of Exceeding Interconnection Capacity

It is the intent of the Parties that power deliveries to the PG&E Electric System shall not exceed the Interconnection Capacity specified in Appendix E at any time. In the event that power deliveries exceed the Interconnection Capacity, the Parties, at either Party's request, shall meet to determine the reason that the Interconnection Capacity was exceeded. If the Parties determine that such an event was not due to Force Majeure or an Emergency and is reasonably likely to occur again in the future then a new Interconnection Capacity shall be established. PG&E shall have the right to require that a study be conducted pursuant to the ISO Tariff and/or the TO Tariff, at Applicant's expense, to determine if additional facilities, including upgrades to the PG&E transmission system, are required to accommodate the increased Interconnection Capacity. If the Parties fail to agree, within thirty (30) calendar days after the initial meeting, that the Interconnection Capacity must be increased, the matter, at either Party's request, shall be resolved through the dispute resolution procedures set forth in Section 15.10. If PG&E determines that additional facilities are required, then the Parties shall work together, in good faith, to develop a Generator Special Facilities Agreement as described in Section 6.5.

7.1.2 Operating Procedures and Limitations

Applicant shall adhere to the operating procedures and limitations as set forth in

7.2 Generator Must Meet Standards

Appendix H.

7.2.1 Generating Facility to Meet Applicable Laws and Good Utility Practice

Applicant shall be fully responsible for designing new Generating Facilities or additions to existing Generating Facilities in accordance with Good Utility Practice. Applicant is also fully responsible for installing, owning, operating and maintaining the Generating Facility in accordance with all applicable laws, rules and regulations of governmental agencies having jurisdiction and in accordance with Good Utility Practice.

7.2.2 Generating Facility to Meet Requirements of the PG&E Interconnection

Handbook

New Generating Facilities or modifications to existing Generating Facilities shall be designed and constructed in accordance with the PG&E Interconnection Handbook. The Generating Facility shall be operated and maintained in accordance with the PG&E Interconnection Handbook except as provided in Section 7.2.2.1 and Appendix F.

7.2.2.1 Exceptions for Existing Projects

For existing projects that are already interconnected and operating in parallel with the PG&E Electric System, PG&E may waive, in its sole discretion, specific requirements of the PG&E Interconnection Handbook; provided, that PG&E, (i) shall not waive any requirements where in PG&E's judgment such waiver (a) would be inconsistent with Good Utility Practice or (b) could reduce the ability of the Generating Facility to operate safely, (ii) shall apply such waiver on a non-discriminatory basis for all such existing projects, and (iii) shall specify what requirements have been waived in Appendix F. In the event that such a waiver results, or might result, in PG&E's sole judgment, in an Emergency, a degradation of the PG&E Electric System Integrity, a system disturbance, or any other such event, PG&E shall have the right to rescind such waiver and require the Generating Facility to meet at Applicant's expense and within a reasonable amount of time the then-current requirements of the PG&E Interconnection Handbook as may be necessary to address the problem identified by PG&E. The waivers in Appendix F shall continue to apply with respect to requirements that are not implicated by the problem identified by PG&E. At either Party's request, disputes under this Section 7.2.2.1 shall be resolved through dispute resolution proceedings pursuant to Section 15.10.

7.2.2.2 Waivers for Modified Generating Facilities

The waivers specified in Appendix F relating to Generating Facilities that are modified shall continue to apply with respect to those portions of the Generating Facilities that have not been modified, expect as provided under Section 7.2.2.1.

7.2.3 Applicant Shall Provide Transmission Planning Data

Applicant is obligated to provide PG&E with steady state and dynamic data for the Generating Facility as required by the PG&E Interconnection Handbook and the WSCC.

7.2.4 Applicant Shall Operate Protective Devices

Applicant shall operate protective and safety devices as required by Section 7.2.2 for safe parallel operation of the Generating Facility with the PG&E Electric System.

7.2.5 Duty to Minimize Disturbances

Applicant agrees to plan and operate its Generating Facility in order to minimize electrical disturbances on the PG&E Electric System caused by the operation of Applicant's Generating Facility.

7.2.6 Power Delivery Standard

Power delivered to the PG&E Electric System from the Generating Facility shall be at what is commonly designated as three phase alternating current, at 60 Hertz, and at the normal voltage specified in Appendix E. Normal variations in voltage and frequency shall be permitted pursuant to Good Utility Practice.

7.3 No Parallel Operation Without Approval

For new Generating Facilities or for existing Generating Facilities that have shut down pursuant to Section 6.1.5, Applicant shall not operate its Generating Facility in parallel with the PG&E Electric

System until the Generating Facility has been inspected by an authorized PG&E representative and final written approval has been received from PG&E, which approval shall not be unreasonably withheld. Any such inspection and approval shall not be deemed or construed as any representation, assurance, guarantee or warranty by PG&E of the safety, durability, reliability, or compliance as required in Section 7.2, of the Generating Facility and its control, protective and safety devices or the quality of power produced by the Generating Facility.

7.4 Applicant Must Implement Operating Guidelines

Applicant shall implement the operating guidelines contained in this Agreement, including applicable guidelines included in the PG&E Interconnection Handbook to the extent they do not conflict with FERC or NRC permitting or licensing requirements. Applicant shall ensure that its operating personnel are familiar with the procedures and guidelines contained in or incorporated by reference into this Agreement.

7.5 Obligation to Maintain Power Factor

Applicant understands that the voltage of PG&E's electric transmission system is not automatically regulated and may vary widely. The voltage levels will fluctuate depending on operation and PG&E Electric System conditions. In accordance with the PG&E Interconnection Handbook, Applicant shall install, operate, and maintain the necessary equipment to maintain proper power factor and voltage at the Point of Interconnection. All voltage regulation equipment shall be operated in an automatic mode being immediately responsive to changes in voltage, except for voltage regulation equipment with respect to which the requirement for automatic mode equipment is waived pursuant to Section 7.2.2.1 of this Agreement.

7.6 Emergency Disconnection

In an Emergency, Applicant agrees to expeditiously open the Disconnect Device upon notification from the Designated PG&E Electric Control Center.

7.7 Clearance Point Request by PG&E

Applicant must open its Disconnect Device if PG&E requests a Clearance Point. A qualified PG&E employee will observe that the Disconnect Device is open, lock it with a PG&E lock, and attach a filled-out "Man-on-Line" tag to indicate it is a Clearance Point.

7.8 Routine Tests and Non-Tests

Unless the parties agree otherwise, when conducting a test or a Non-Test, Applicant agrees to follow the procedures described in Appendix B.

7.9 Obligation to Maintain Insurance

Applicant agrees to acquire and continuously maintain during the term of this Agreement insurance coverage which meets the requirements of Appendix A.

7.10 New or Modified Interconnections

7.10.1 ISO Tariff and TO Tariff Provisions

Applicant shall follow all applicable provisions of the ISO Tariff and/or the TO Tariff regarding new interconnections or modifications to or increases in capacity of its existing interconnection.

7.10.2 Right to Install Special Facilities

In the event it is necessary, consistent with Good Utility Practice, for PG&E to install any PG&E-owned facilities in order to accommodate an increase in the Interconnection Capacity, the Parties shall work together, in good faith, to agree upon the extent and Costs of such facilities. If the Parties cannot

agree on the need or Cost of such facilities, then the dispute shall be resolved through procedures set forth in Section 15.10; provided, that in the event that PG&E deems it necessary to begin construction of the facilities prior to the resolution of a dispute, PG&E shall have the right to develop a new or amended Generator Special Facility Agreement and file such new or amended agreement unilaterally with the FERC pursuant to Section 15.23. Each new or amended Generator Special Facility Agreement shall specify that the Applicant pay PG&E the Costs of such facilities and that PG&E has no obligation to begin construction prior to receipt of such payments.

7.11 Conflicting Instructions

In the event that Applicant receives conflicting operating instructions from PG&E and the ISO, Applicant shall follow the instructions of the ISO.

7.12 Participating Generating Agreement

Applicant shall enter into and maintain the effectiveness of a Participating Generator Agreement with the ISO.

8 OPERATING COMMUNICATIONS AND NOTIFICATIONS

8.1 Designated Representatives

The Parties shall provide for operating communications through their respective designated representatives as follows:

Transmission Operator PG&E	Los Esteros Critical Energy Centery, LLC Applicant		
Operating Supervisor or Available Operator Title	General Manager- South Bay Plants Name or Title of Operator		
Metcalf Control Center Designated PG&E Electric Control Center	Ph: (408) 847-5328 Fax: (408) 456-0421 Telephone Number		
Ph: (408) 4637700 Fax: (408) 433-7702 Telephone Number	Alternate Operator		
	Telephone Number		

8.2 Communication with the Designated PG&E Electric Control Center

- 8.2.1 Applicant shall maintain operating communications with the Designated PG&E Electric Control Center. The operating communications shall include, but not be limited to, advising the Designated PG&E Electric Control Center promptly, and in advance if possible, of any paralleling with or separation from the PG&E Electric System and any scheduled and unscheduled shutdowns, equipment clearances, and changes in levels of operating voltage or power factors.
- 8.2.2 Applicant promptly shall notify the Designated PG&E Electric Control Center of, and any changes in, the following:
- (a) The current names and 24-hour phone numbers of the personnel responsible for operating and maintaining the Generating Facility.

- (b) Any Emergency situation or any request that PG&E de-energize a portion of the PG&E Electric System under its control.
- (c) Any changes in the mechanical or electric condition of the Generating Facility or Interconnection Facilities that may affect the reliability of either the Generating Facility or the PG&E Electric System.
- (d) Immediately upon discovery, any misoperation or inoperable condition of a PG&E-required interconnection relay or circuit breaker.
- (e) Immediately upon discovery, the operation of any circuit breaker that has operated by a PG&E-required interconnection relay, along with the relay targets that caused the circuit breaker to operate.
- (f) Plans to manually parallel with or separate from the PG&E Electric System and the times of actual manual parallels and separations. Emergency separations shall be reported as soon as conditions permit.

8.3 Oral Communications

All oral operating communications shall be conducted through the Designated PG&E Electric Control Center. Applicant agrees to maintain 24 hour direct phone service so that PG&E can give instructions to Applicant or its designated operator.

8.4 Telemetering Requirements

For Generating Facilities 1,000 kW and greater, Applicant must telemeter real-time information pursuant to the requirements of the PG&E Interconnection Handbook. When telemetered real-time information is required for PG&E to bill Applicant for service taken under separate PG&E tariffs, upon PG&E's request, Applicant shall request the ISO to provide PG&E with read-only passwords and other information necessary for PG&E to access Applicant's meters.

8.5 Operating Agreements

The Parties may enter into a separate agreement describing specific operating procedures regarding the Generator Facility.

9 OPERATION AND MAINTENANCE OF GENERATING FACILITY AND GENERATOR STEP-UP FACILITIES

9.1 Power Factor and Voltage Instructions

Applicant will receive, from time to time, and shall follow output voltage or power factor instructions from the Designated PG&E Electric Control Center or the ISO. The Applicant may also receive voltage instructions that will exceed the normal output voltage or power factor instructions. These instructions will not exceed the normal operating ranges of 0.95 buck (lead) or 0.90 boost (lag). During certain instances the Generating Facility may be given a voltage order of "full boost" or "full buck". Full boost is not less than 105 % of the Generating Facility nameplate terminal voltage. Full buck is not more than 95% of the Generating Facility nameplate terminal voltage. Applicant shall operate the Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection, unless prevented from doing so as a consequence of PG&E Electric System conditions. If Applicant is unable to maintain the specified voltage or power factor, it shall promptly notify the Designated PG&E Electric Control Center.

9.2 Daily Operating Report and Telemetering Information

9.2.1 The Applicant agrees to transmit, at a minimum, hourly readings of delivered

capacity in kW by means of telemetering as described in Section 8.4. Readings shall be taken at the end of each hour.

9.2.2 Upon receiving notice that telemetered data is not being correctly received by PG&E, Applicant agrees to supply the information set forth in section 9.2.1 in a daily operating report by telephone directly to the Designated PG&E Electric Control Center at the phone number in Section 8.1. The Applicant shall submit complete daily operating report information for the previous 24-hour period (ending at 2400 hours) not later than 0030 hours the following day, or as mutually agreed by the Applicant and PG&E. Such report shall also include the total energy, in kWh, delivered to PG&E since the last report.

9.3 Unattended Operation

If the Generating Facility is unattended and has the capability for automatic or remotely-initiated paralleling, it is not necessary to notify the Designated PG&E Electric Control Center before paralleling with the PG&E Electric System. However, such Generating Facility must report relay targets within 72 hours following automatic separation, or immediately upon request of the Designated PG&E Electric Control Center. All unattended facilities must be equipped with an event recorder as described in the PG&E Interconnection Handbook.

9.4 Maintenance Notice

Under normal conditions, Applicant shall give as much advance notice as possible (a minimum of four (4) Business Days) to the Designated PG&E Electric Control Center when planning to perform work that may affect the PG&E Electric System. At a minimum, the notice shall include:

- (a) Nature of the work to be performed.
- (b) Date and time the work will begin.
- (c) Date and time the work will be completed.
- (d) Apparatus to be cleared and the Clearance Points required.
- (e) Name and telephone number of the person in charge of the work.
- (f) Whether or not protective grounds will be installed.

9.5 Maintenance on Facilities Energized by PG&E

- 9.5.1 If Applicant wishes to perform work on its own facilities which would normally be energized by transmitting energy over the PG&E Electric System, Applicant may request that PG&E take a clearance (see UO Standard S1403) on PG&E's associated electric facilities needed to isolate Applicant's facilities from the PG&E Electric System. Applicant's request must be made with a minimum of four (4) Business Days in advance or as otherwise may be agreed from time to time. PG&E shall notify any users of PG&E's Electric System that might be affected by the clearance and shall coordinate such request with the ISO as appropriate. PG&E shall reserve the right to delay the clearance if: (1) the ISO does not have the responsibility for approving the clearance; and (2) in PG&E's reasonable judgment, there are PG&E Electric System users that will be adversely affected by such clearance. In such event, PG&E shall not unduly delay the requested clearance.
- 9.5.2 PG&E is not responsible for Applicant's equipment energized by the generator stepup transformer or by any other means. Applicant agrees that any work it performs is at its own risk. Applicant shall take all necessary steps to ensure that work is conducted consistent with Good Utility Practice and in compliance with all applicable federal, state, and local laws and regulations and in a manner that does not endanger the safety of persons or equipment.

9.6 PG&E Maintenance on Applicant's Facilities

If PG&E provides assistance in the operation or maintenance of the Applicant's Facility without a written agreement, PG&E assumes no liability for any loss or damage, direct, indirect or consequential, arising from or related to any services PG&E may provide. PG&E reserves the right to charge the Applicant for all such services.

10 METERING

10.1 Delivery Meters

All real and reactive power deliveries to the PG&E Electric System from Applicant's Generating Facility shall be metered at each Point of Interconnection with meters meeting the requirements of: (i) Appendix J to the ISO Tariff for interconnections at 60 kV and above ("transmission interconnection"); and (ii) the PG&E Wholesale Distribution Tariff for interconnections below 60 kV ("distribution interconnection"). In addition, meters and metering equipment shall meet the requirements of the PG&E Interconnection Handbook. Any conflicts with regard to metering standards that may arise between this Agreement, the ISO Tariff, or the PG&E Wholesale Distribution Tariff shall be resolved consistent with the applicable tariff. Power deliveries shall be metered at voltage specified for the Interconnection Point in Appendix E.2.1.

10.2 Power Supply Metering Requirements

The Parties shall cooperate in the installation and provision of access to the meters, as necessary for each Party to obtain the information needed to perform as contemplated under this Agreement.

10.3 Requirements for Meters and Meter Maintenance

The Responsible Meter Party's metering equipment located at each Point of Interconnection shall measure and record real and reactive power flows and shall be capable of recording flows in both directions. Such "in" and "out" bi-directional meters shall be designed to prevent reverse registration and shall measure and continuously record such deliveries. Meters, metering transformers and devices shall be maintained and tested by the Responsible Meter Party in accordance with applicable metering maintenance and testing standards and guidelines.

10.4 Meter Access

10.4.1 Access to Meter-Related Facilities

The Party that owns meter-related facilities such as metering transformers and devices shall grant reasonable access to allow the other Party to use such meter-related facilities for the other Party's own meters; provided that, the other Party shall compensate the owning Party for actual costs incurred related to such access.

10.4.2 Reading and Maintaining Meters

If required, the other Party shall grant the Responsible Meter Party access to the other Party's facilities as may be required for meter reading and/or the proper operation and maintenance of all revenue metering facilities.

11 MAINTENANCE OF INTERCONNECTION EQUIPMENT OWNED BY THE APPLICANT

11.1 Modifications to the Interconnection or Protection Devices

Prior to modifying its existing interconnection or protection devices, Applicant agrees to obtain PG&E's written approval; provided that, PG&E's approval shall not be unreasonably withheld. Applicant shall notify PG&E, in writing, at least sixty (60) days prior to such modification.

11.2 Testing of Interconnection Facilities

PG&E-required Interconnection Facilities owned by Applicant shall be periodically tested and maintained at the manufacturer's accepted specifications, but no less than every four (4) years, by qualified personnel. Copies of equipment test reports shall be forwarded to PG&E for review.

11.3 Relay Requirements

- 11.3.1 All PG&E-required interconnection relays shall be sealed by PG&E. If a relay is removed for maintenance or repair, the Designated PG&E Electric Control Center shall be notified. If the seals are broken for any reason, PG&E will be responsible for inspecting and resealing the relays.
- 11.3.2 Lamicoid or equivalent forms of nameplates or labels shall be installed by Applicant adjacent to all PG&E-required interconnection relays. Each relay nameplate shall include the device number and the relay's function.

12 REFERENCES

The following reference materials, all of which are subject to revision or being superseded from time to time, are available for use by Applicant and its operating personnel. Copies may be requested from the Designated PG&E Electric Control Center:

12.1 PG&E Utility Operations Standard S1466

A document listing all the standard operating orders followed by PG&E system operators.

12.2 PG&E Utility Operations Standard S1403

A document describing approved PG&E clearance procedures and instructions for obtaining clearances.

13 SIGNIFICANT REGULATORY CHANGE

13.1 Automatic Conformance

This Agreement shall be automatically modified to conform to any final order issued by the FERC that directly addresses a provision or provisions of this Agreement. Such changes shall be filed by PG&E at FERC and a copy provided to Applicant. Such conformance shall be prospective only and shall not affect any rights or obligations of either party that have accrued as of the date of the order requiring conformance under the terms of this Agreement.

13.2 Notification

If, at any time during the term of this Agreement, either Party becomes aware of a Significant Regulatory Change (whether actual or proposed), including any automatic conformance under Section 13.1 herein, and if such change may reasonably be expected materially to affect either or both Parties' obligations or operations under this Agreement, such Party shall provide written notice to the other

Party promptly no later than one (1) month after becoming aware of such Significant Regulatory Change. The notice shall contain a description of the Significant Regulatory Change, including expected time schedules. If the Party giving notice believes that it will be necessary to amend this Agreement to address the anticipated change, then the notice to the other Party may include a proposal that the Parties meet as provided in Section 13.3.2 hereof in order to negotiate an appropriate amendment to this Agreement.

13.3 Change in Functions or Scope

The Parties recognize that there may be a change in the functions of the ISO or a change in the scope of the facilities under the operational authority of the ISO or the replacement of the ISO with a Regional Transmission Organization that may perform different functions or have a different scope than the ISO. Such a change shall not be deemed to be a Significant Regulatory Change unless the change may reasonably be expected materially to affect either or both Parties' obligations or operations under this Agreement. Furthermore, a Significant Regulatory Change shall not be deemed to have occurred solely as a consequence of any shifting of functions contemplated in this Agreement between PG&E and the ISO. In such event, functions assigned to PG&E under this Agreement shall be performed by the ISO and the ISO shall have the same rights and obligations as PG&E under this Agreement to obtain information, perform studies, have access to rights-of-way and facilities, construct facilities, and otherwise perform the functions described in this Agreement. Only if the ISO refuses to perform the functions previously performed by PG&E shall a Significant Regulatory Change be deemed to have occurred as a result of a change in functions.

13.4 Amendment of Agreement

- 13.4.1 Following notification under Section 13.2, the Parties shall meet to discuss whether an amendment to this Agreement is necessary to address the Significant Regulatory Change. Such amendment, if any, shall be limited in scope to what is necessary to allow this Agreement to accommodate the Significant Regulatory Change identified in the notice issued pursuant to Section 13.2.
- 13.4.2 If the Parties agree that such an amendment to this Agreement is necessary, the Parties will proceed to negotiate in good faith such amendment. If the Parties have not reached agreement within sixty (60) calendar days of the date of the first meeting, any unresolved issues shall be resolved through dispute resolution procedures set forth in Section 15.10. Notwithstanding the above, if any issues remain unresolved as of ninety (90) calendar days before the Significant Regulatory Change is scheduled to take place then, with respect to the unresolved issues, PG&E may, but is not required to, unilaterally file an amendment to this Agreement with FERC pursuant to Section 205 of the FPA, and Applicant may exercise its rights under the FPA to protest or oppose such filing.
- 13.4.3 If the Parties cannot agree that an amendment to this Agreement is necessary to allow this Agreement to accommodate the Significant Regulatory Change, they shall submit such dispute to dispute resolution proceedings pursuant to Section 15.10; provided, however, that if such dispute is not resolved as of ninety (90) calendar days before the Significant Regulatory Change is scheduled to take place, then PG&E may, but is not required to, unilaterally file an amendment to this Agreement with FERC as set forth in the paragraph above.
- 13.4.4 Nothing in this Section 13.43 shall be deemed to limit PG&E's right to make changes pursuant to Section 15.23.1.

14 BILLING AND PAYMENT

14.1 Maintenance Payments

PG&E shall bill Applicant for the Costs of performing necessary maintenance during non-working hours at the request of Applicant pursuant to Section 6.4.3.2. Applicant shall pay PG&E for such

Costs at:

Pacific Gas and Electric Company Payment Processing Center Research Unit / B5A P.O. Box 770000 San Francisco, CA 94177

PG&E may change the place where payment is made by giving Applicant notice thereof as provided in Section 15.21.

14.2 Payment Due Date

PG&E shall prepare and submit bills to Applicant on or after the first Business Day of each calendar month. The payment of any bill shall be due and must be received by PG&E not later than the 30th calendar day following the day on which Applicant receives the bill or, if that 30th day is a Saturday, Sunday or legal holiday, the next Business Day. Such date shall be referred to as the "Payment Due Date". A bill shall be deemed delivered and received on the third Business Day after the postmarked date unless a copy of the bill is sent by electronic facsimile, in which case it shall be deemed delivered on the same day. If Applicant has a question concerning a bill, it may review the back-up data used in preparation of the bill to the extent that data is still available.

14.3 Estimated Bills

If charges under this Agreement cannot be determined accurately for preparing a bill, PG&E may use its best estimates in preparing the bill and such estimated bill shall be paid by Applicant. Any estimated charges shall be labeled as such and PG&E shall, upon request, document the basis for the estimate used. Estimated bills shall be prepared and paid in the same manner as other bills under this Agreement.

14.4 Disputed Bills

If Applicant disputes all or any portion of a bill submitted by PG&E to Applicant, it nevertheless shall, not later than the Payment Due Date of that bill, pay the bill in full. A dispute between either PG&E or Applicant and any Third Party shall not be a proper basis for withholding payment. Payments to PG&E of Applicant's obligations arising under this Agreement are not subject to any reduction, whether by offset, payments into escrow, or otherwise, except for routine adjustments or corrections as may be agreed to by the Parties or as expressly provided in this Agreement.

14.5 Adjusted Bills

When final and complete billing information becomes available and a charge is determined accurately or billing errors are identified and corrected, PG&E shall promptly prepare and submit an adjusted bill to Applicant, and any additional payments by Applicant shall be made in accordance with the provisions of this Section 14.5. Refunds by PG&E shall be paid to Applicant not later than thirty (30) calendar days after the date of the adjusted bill. Such date shall be referred to as the "Refund Due Date". All adjustments or corrections of bills under this Agreement shall be subject to the interest provisions of Sections 14.7 and 14.8.

14.6 Interest on Adjusted Bills

Interest on an additional payment shall accrue from the Payment Due Date of the applicable bill and interest on a refund shall accrue from the date payment of the applicable bill was received by PG&E.

14.7 Interest on Unpaid Bills

Any amount due under this Agreement which is not timely paid shall accrue interest from the date prescribed in Section 14.6 until the date payment is made. The interest amount shall be determined using

the interest rate applicable to any amount due during a given month and shall be calculated using the methodology for refunds pursuant to Section 35.19(a) of FERC's Regulations, 18 CFR § 35.19(a). This interest rate shall not exceed the maximum interest rate permitted under California law. Interest shall be calculated for the period during which the payment is overdue or the period during which the refund is accruing interest.

14.8 Payment on Disputed Bills

As provided in Section 14.4, if any portion of a bill is disputed, Applicant shall pay the full amount, without offset or reduction, by the Payment Due Date. In addition, Applicant shall, on or before the Payment Due Date, notify PG&E, in writing, of the amount in dispute and the specific basis for the dispute. PG&E and Applicant shall endeavor to resolve any billing dispute within thirty (30) calendar days of PG&E's receipt of Applicant's notice of a dispute (or such extended period as the Parties may establish). If the Parties cannot agree, either Party may initiate dispute resolution pursuant to Section 15.10.

14.9 Refunds

If, after Applicant has paid the full amount of a disputed bill directly to PG&E, the results of dispute resolution pursuant to Section 15.10 include a determination that the amount due was different than the amount paid by Applicant, a refund by PG&E to Applicant shall include interest for the period from the date Applicant's overpayment was received by PG&E to the date the refund is paid to Applicant. Likewise, an additional payment by Applicant to PG&E shall include interest for the period from the original Payment Due Date to the date Applicant's additional payment is received by PG&E. Interest paid pursuant to this Section 14.9 shall be at the rate determined pursuant to Section 14.7.

14.10 Failure to Make Payment

A Party's failure to make any payment on or before the applicable Payment Due Date or Refund Due Date shall constitute a material breach of this Agreement if that failure is not corrected within seven (7) Business Days after the other Party delivers written notice to non-paying Party. In such event, the Party not receiving payment shall be entitled to pursue any legal, equitable and regulatory rights and remedies it may have under this Agreement or otherwise.

15 GENERAL PROVISIONS

15.1 Appendices Included

The following Appendices to this Agreement, as they may be revised from time to time by written agreement of the Parties or by order of FERC, are attached hereto and are incorporated by reference as if fully set forth herein:

Appendix A - Insurance

Appendix B - Routine Test Guidelines and Non-Test Procedures

Appendix C - Dispute Resolution and Arbitration

Appendix D - Elections Made By Applicant for New Generators

Appendix E - Generating Facility Information and Interconnection Capacity

Appendix F - PG&E Interconnection Handbook Waivers

Appendix G - Appendix A of the Reliability Management Agreement

Appendix H - Operating Procedures and Limitations

15.2 Accounting

For good cause and upon reasonable notice each Party shall have the right to audit, at its own expense, the relevant records of the other Party (including the relevant records of Applicant's meters) for the limited purpose of determining whether the other Party is meeting its obligations under this Agreement. Such audits shall be limited to the preceding twelve month period and to only those records reasonably required to determine compliance with this Agreement, and each Party agrees to disclose the information obtained in such audit only to those persons, whether employed by such Party or otherwise, that are directly involved in the administration of this Agreement. Each Party agrees that under no circumstances will it use any information obtained in such an audit for any commercial purpose or for any purpose other than assuring enforcement of this Agreement.

15.3 Adverse Determination or Expansion of Obligations

15.3.1 Adverse Determination

If, after the effective date of this Agreement, FERC or any other Governmental Authority of competent jurisdiction determines that all or any part of this Agreement, its operation or effect is unjust, unreasonable, unlawful, imprudent or otherwise not in the public interest, each Party shall be relieved of any obligations hereunder to the extent necessary to comply with or eliminate such adverse determination. The Parties shall promptly enter into good faith negotiations in an attempt to achieve a mutually agreeable modification to this Agreement to address any such adverse determination.

15.3.2 Expansion of Obligations

If, after the effective date of this Agreement, FERC or any other Governmental Authority of competent jurisdiction orders or determines that this Agreement should be interpreted, modified, or significantly extended in such a manner that PG&E or Applicant may be required to extend its obligations under this Agreement to a Third Party, or to incur significant new or different obligations to the other Party or to Third Parties not contemplated by this Agreement, then the Parties shall be relieved of their obligations to the extent lawful and necessary to eliminate the effect of that order or determination, and the Parties shall attempt to renegotiate in good faith the terms and conditions of the Agreement to restore the original balance of benefits and burdens contemplated by the Parties at the time this Agreement was made.

15.3.3 Renegotiation

If, within three (3) months after an order or decision as described in Sections 15.3.1 and 15.3.2, the Parties either: (i) do not agree that a renegotiation is feasible or necessary; or (ii) the Parties cannot agree to amend or supersede this Agreement, then: (a) either Party may submit the dispute for resolution in accordance with procedures set forth in Section 15.10; or (b) PG&E may unilaterally file a replacement interconnection agreement with FERC.

15.4 Assignments

15.4.1 Assignment

The rights under this Agreement shall not be assignable or transferable nor the duties delegable by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, that the other Party's consent shall not be required for (i) assignments in connection with interests that arise by reason of any deed of trust, mortgage, indenture or security agreement granted or executed by such Party, and (ii) assignments to affiliates where, in the absence of the other Party's consent thereto, the assigning Party retains responsibility for the payment of all of its obligations and liabilities hereunder. This section shall not restrict PG&E's ability to assign this Agreement to a successor entity owning the transmission system in accordance with a confirmed Plan of Reorganization of PG&E.

15.5 Captions

All indices, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of this Agreement.

15.6 Construction of the Agreement

Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be determined by the Agreement taken in its entirety.

15.7 Control and Ownership of Facilities

The PG&E Electric System shall at all times be and remain in the exclusive ownership, possession and control of PG&E, and nothing in this Agreement shall be construed to give Applicant any right of ownership, possession or control of all or any portion of the PG&E Electric System. All facilities installed hereunder shall, unless otherwise agreed by the Parties, at all times be and remain the property of PG&E, notwithstanding that they may be affixed to premises owned or leased by or under license to Applicant.

15.8 Cooperation and Right of Access and Inspection

Each Party shall give to the other all necessary permission to enable it to perform its obligations under this Agreement. Each Party shall give the other Party the right to have its agents, employees and representatives, when accompanied by the agents, employees and representatives of the other Party, enter its premises at reasonable times and in accordance with reasonable rules and regulations for the purpose of inspecting the property, equipment and maintenance, testing and inspection records relative to the Interconnection Facilities or other protective equipment of the Party in a manner which is reasonable for assuring the performance of the Parties under this Agreement. Any information that either Party obtains through the exercise of its rights under this section 15.8 shall be deemed confidential information in accordance with section 15.26 of this Agreement.

15.9 Default

15.9.1 Termination for Default

If either Party breaches its material obligations under this Agreement, such breach shall constitute an event of default. If either Party defaults under this Agreement, the other Party may terminate this Agreement; provided, that prior to such termination the other Party must provide the defaulting Party with written notice stating: 1) the Party's intent to terminate; 2) the date of such intended termination; 3) the specific grounds for termination; 4) specific actions which the defaulting Party must take to cure the default, if any; and 5) a reasonable period of time, which shall not be less than sixty (60) calendar days, within which the defaulting Party may take action to cure the default and avoid termination, provided, there is any action which can be taken to cure the default. The pendancy of any dispute resolution procedure pursuant to Section 15.10 with regard to any separate dispute(s), other than the event of default, shall not limit the right to terminate this Agreement under this Section 15.9.

15.9.2 Other Remedies for Default

The remedy under Section 15.9.1 is not exclusive, and subject to Section 15.10 either Party also shall be entitled to pursue any other legal, equitable or regulatory rights and remedies it may have in response to a default by the other Party.

15.10 Dispute Resolution

The Parties shall make best efforts to resolve all disputes arising under this Agreement expeditiously and by good faith negotiation. Where this Agreement specifically calls for resolution of disputes

pursuant to this Section 15.10, such disputes shall be resolved according to the procedures set forth in Appendix C. In all other circumstances the procedures in Appendix C may be used to resolve disputes upon agreement by both Parties. In the event that a matter is submitted to arbitration under Appendix C, the Parties shall be bound by the determination of the arbitrator(s).

15.11 Governing Law

This Agreement shall be interpreted, governed by and construed under the laws of the State of California, as if executed and to be performed wholly within the State of California.

15.12 Indemnity

15.12.1 Definitions

As used in this Section 15.12, with initial letters capitalized, whether in the singular or the plural, the following terms shall have the following meanings:

15.12.1.1 Accident — Personal injury, death, property damage, or economic loss which:

- (a) is sustained by a Third Party ("Claimant"), which is an end use customer of a Party;
- (b) arises out of delivery of, or curtailment of, or interruption to electric service, including but not limited to abnormalities in frequency or voltage; and
 - (c) results from either or both of the following:
 - (i) engineering, design, construction, repair, supervision, inspection, testing, protection, operation, maintenance, replacement, reconstruction, use, or ownership of either the PG&E Electric System or Applicant's electric facilities; or
 - (ii) the performance or non-performance of either Party's obligations or the exercise of either Party's rights under this Agreement.
 - 15.12.1.2 Indemnitee A Party defined in Section 15.12.2(b).
 - 15.12.1.3 Indemnitor A Party defined in Section 15.12.2(b).

15.12.2 Indemnity Duty

If a Claimant makes a claim or brings an action against a Party seeking recovery for loss, damage, costs or expenses resulting from or arising out of an Accident (a "Claim"), the following shall apply:

- (a) That Party shall, in its reasonable discretion, either (i) defend any such Claim brought against it, (ii) satisfy any such Claim, (iii) give written notice of such Claim to the other Party within twenty (20) Business Days of knowledge of its existence and request that the other Party undertake the defense of such Claim, or (iv) in the event the Indemnitor does not accept the obligation to defend such Claim or does not respond within the period set forth in Section 15.12.2.(b), proceed as set forth in (i) and (ii) in this Section 15.12.1.(a).
- (b) That Party ("Indemnitor") shall hold harmless, defend and indemnify, to the fullest extent permitted by law, the other Party, its directors or members of its governing board, officers and employees ("Indemnitees"), upon written request by the Indemnitee, for Claims brought against the Indemnitee allegedly resulting from Accidents caused by acts or omissions of the Indemnitor. The Indemnitor shall respond in writing within twenty (20) Business Days to any written notice of Claim from the Indemnitees, as provided in Section 15.12.2.(a), either accepting the obligation to defend the Claim or refusing to undertake such Claim.

- (c) No Party shall be obligated to defend, hold harmless or indemnify the other Party, its directors or members of its governing board, officers and employees for Accidents resulting from the latter Party's gross negligence or willful misconduct.
- (d) If a Party successfully enforces this indemnity, the Party against which enforcement is required shall pay all costs of satisfying the Claim, including reasonable attorneys' fees and other settlement or litigation expenses, incurred in such enforcement, within sixty (60) days of written notice thereof.

15.13 Interpretation

This Agreement is not intended to modify any PG&E or ISO tariff or rule filed with the CPUC or FERC. In case of conflict between this Agreement and any PG&E or ISO tariff or rule, the tariff or rule shall govern. This Agreement represents the entire understanding between the Parties hereto relating to the interconnection and parallel operation of the Generating Facility with the PG&E Electric System, and supersedes any and all prior proposals or agreements, whether written or oral, that may exist between the Parties. Where there is conflict or inconsistency with the express terms in this Agreement and any documents referenced by this Agreement excluding the above referenced PG&E and ISO tariffs, the terms of this Agreement shall supersede such conflicting terms.

15.14 Judgments and Determinations

When the terms of this Agreement provide that an action may or must be taken, or that the existence of a condition may be established based on a judgment or determination of a Party, such judgment shall be exercised or such determination shall be made reasonably and in good faith, and where applicable in accordance with Good Utility Practice, and shall not be arbitrary or capricious.

15.15 Liability

15.15.1 To Third Parties

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any Third Party.

15.15.2 Between the Parties

Except for its willful misconduct, gross negligence, or with respect to breach of this Agreement, or with respect to the indemnity duty under Section 15.12.2, no Party, nor its directors or members of its governing board, officers, employees or agents shall be liable to another Party for any loss, damage, claim, cost, charge or expense arising from or related to this Agreement. In the event of breach of this Agreement, neither Party, nor its directors or members of its governing board, officers, employees or agents shall be liable to the other Party for any consequential, special or indirect damages.

15.15.3 Protection of a Party's Own Facilities

Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of another Party's facilities, and such other Party shall not be liable for any such damage so caused.

15.15.4 Liability for Interruptions

Neither Party shall be liable to the other, and each Party hereby releases the other and its directors, officers, employees and agents from and indemnifies them, to the fullest extent permitted by law, for any claim, demand, liability, loss or damage, whether direct, indirect or consequential, incurred by either Party, which results from the interruption or curtailment in accordance with (i) this Agreement, (ii) Good Utility Practice, or (iii) as directed by the ISO, of power flows through a Point(s) of Interconnection made available by PG&E under this Agreement, or of power flows made possible by reason of that Point(s)

of Interconnection.

15.16 Modification

This Agreement may be amended or modified only by a written instrument signed by the authorized representatives of both Parties, except as may otherwise herein be expressly provided.

15.17 No Dedication of Facilities

Any undertaking by either Party under any provision of this Agreement is rendered strictly as an accommodation and shall not constitute the dedication by Applicant of any part or all of the Generating Facility or by PG&E of any part or all of the PG&E Electric System to the other, the public, or any Third Party. Any such undertaking by any Party under a provision of, or resulting from, this Agreement shall cease upon the termination of that Party's obligations under this Agreement.

15.18 No Obligation to Offer Same Service To Others

By entering into this Agreement to interconnect with Applicant and filing it with FERC, PG&E does not commit itself to furnish any like or similar undertaking to any other Person.

15.19 No Precedent

This Agreement establishes no precedent with regard to any other entity or agreement. Nothing contained in this Agreement shall establish any rights to or precedent for other arrangements as may exist, now or in future, between PG&E and Applicant for the provision of any interconnection arrangements or any form of electric service.

15.20 No Transmission, Distribution or Ancillary Services Provided

Under this Agreement, PG&E does not undertake to provide or make available any transmission service, distribution service, or Ancillary Services using any part of the PG&E Electric System for Applicant or any Third Party, or to act as a Scheduling Coordinator or in any other capacity as an intermediary for Applicant with others. Nothing in this Agreement shall be construed to preclude Applicant from seeking transmission, distribution, and Ancillary Services or other services under a separate arrangement or a successor interconnection agreement with PG&E, or pursuant to any tariff for such service which PG&E may have on file with FERC, or on the basis of other rights that may exist in law or regulation.

15.21 Notices

Except as provided in Sections 8 and 9 above and in Appendix C, all notices or other communications herein provided to be given or which may be given by either Party to the other shall be deemed to have been duly given if delivered by electronic facsimile transmission with confirmed receipt, or when made in writing and delivered in person or deposited in the United States mail, postage prepaid, certified mail, return receipt requested and addressed as follows:

To PG&E:

To Applicant:

Director, Interconnection Services

Vice President; Asset Optimization

Pacific Gas and Electric Company

Western Region

Mail Code B13J

Calpine Corporation

P. O. Box 770000

4160 Dublin Boulevard

San Francisco, CA 94177

Dublin, CA 94568-3139

Either Party may change any address or location for notices and other communications by giving notice to the other Party as provided in this Section 15.21.

15.22 Non-waiver

Failure by either Party to enforce any right or obligation with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter or any other matter.

15.23 Reservation of Rights

15.23.1 Rate Changes

Nothing contained herein shall be construed as affecting in any way the right of PG&E to unilaterally make application to the FERC for a change in rates under section 205 of the FPA and pursuant to the FERC's Rules and Regulations promulgated thereunder, Applicant shall have the right to protest and object to such change in rates and otherwise to exercise any and all rights it may have with respect thereto, including its rights under Section 206 of the FPA. The term "rates" as used herein shall mean all rates, terms and conditions contained in this Agreement. A change in rates may include, but not be limited to, not only changes in rates and charges but also in the underlying methodology by which such rates and charges are developed.

15.23.2 FPA Disputes

The Parties agree that each Party expressly reserves all of its rights under Sections 202(b) and 210 of the FPA, including the right to seek resolution by FERC of disputes arising under Sections 202(b) or 210 of the FPA; provided, however, that the Parties may agree to resolve such dispute through procedures set forth in Section 15.10.

15.24 Rules and Regulations

PG&E and Applicant may each establish and, from time to time, change such procedures, rules, or regulations as they shall determine are necessary in order to establish the methods of operation to be followed in the performance of this Agreement; provided, that any such procedure, rule, or regulation shall not be inconsistent with the provisions of this Agreement. If a Party objects to a procedure, rule, or regulation established by the other Party, it will notify the other Party and the Parties will endeavor to modify the procedure, rule, or regulation in order to resolve the objection. If the Parties cannot reach agreement, either Party may seek to resolve such dispute through procedures set forth in Section 15.10.

15.25 Severability

If any term, covenant or condition of this Agreement or its application is held to be invalid as to any person, entity or circumstance, by FERC or any other regulatory body, or agency or court of competent jurisdiction, then such term, covenant or condition shall cease to have force and effect to the extent of that holding. In that event, however, all other terms, covenants and conditions of this Agreement

and their application shall not be affected thereby, but shall remain in full force and effect unless and to the extent that a regulatory agency or court of competent jurisdiction finds that a provision is not separable from the invalid provision(s) of this Agreement.

15.26 Confidentiality

Each Party shall use any non-public information concerning any other Party that is furnished to such party by or on behalf of such other Party in connection with this Agreement (collectively, "Confidential Information") solely for engineering, planning and operating purposes and for the purpose of administering and enforcing this Agreement, and shall limit disclosure of Confidential Information to its employees who need to have the Confidential Information for such purposes. In no event shall Confidential Information be provided to a Third Party except as provided below or with the written consent of the other Party. Notwithstanding the foregoing, each Party may disclose Confidential Information (a) to its directors, officers, employees, auditors, counsel, advisors, or representatives (collectively, the "Representatives") whom it determines need to know such information for the purposes set forth in this Section 15.26; (b) to any governmental agency or regulatory body having or claiming to have authority to regulate or oversee any aspect of such party's business or that of its Representatives in connection with the exercise of such authority or claimed authority; and (c) pursuant to any subpoena or any similar legal process; provided that a Party shall give the other Party prompt notice of any obligation to disclose under paragraphs (b) and (c) above prior to making the disclosure and shall reasonably cooperate with any effort by that Party to oppose the required disclosure. For purposes hereof, the term "Confidential Information" shall not include information that (x) is in a party's possession prior to its being provided by or on behalf of any other party, provided that such information is not known by a Party to be subject to another confidentiality agreement with, or other legal or contractual obligation of confidentiality to, another Party, (y) is or becomes publicly available (other than through a breach hereof by such Party), or (z) becomes available to such Party on a nonconfidential basis, provided that the source of such information was not known by such Party to be bound by a confidentiality agreement or other legal or contractual obligation of confidentiality with respect to such information.

16 EXECUTION

The signatories hereto warrant and represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign. If Applicant is a Governmental Authority, complete execution on its part requires that a certified copy of a resolution of its governing council, board or other controlling body, authorizing Applicant and those signing on its behalf to enter into this Agreement, must be attached.

Dated this day of April 2002.	
PACIFIC GAS AND ELECTRIC COMPANY	LOS ESTEROS CRITICAL ENERGY FACILITY, LLC
By: Signature	By: Signature
NT	Name Vice President
Name	
Title	Title 4/19/02
Date	Date

APPENDIX A

Insurance¹

A.1 General Liability Coverage

- A.1.1 Applicant shall maintain during the performance hereof Commercial General Liability Insurance for bodily injury, personal injury, and property damage in limits, of combined single limit or equivalent for the results of any one (1) occurrence, of not less than \$50,000,000. Such insurance shall provide coverage at least as broad as the Insurance Service Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.²
- A.1.2 Commercial General Liability Insurance shall include coverage for Premises-Operations, Owners and Contractors Protective, Product/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations.
- A.1.3 Such insurance, by endorsement to the policy(ies), shall include PG&E as an additional insured, shall contain a severability of interest or cross-indemnity clause, shall provide that PG&E shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance, and shall provide for thirty (30) calendar days written notice to PG&E prior to cancellation, termination, alteration or material change of such insurance.

A.2 Additional Insurance Provisions

- A.2.1 Evidence of coverage described above in Section 1 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by PG&E.
 - A.2.2 PG&E shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.
- A.2.3 Applicant shall furnish the required certificates³ and endorsements to PG&E prior to commencing operation.
- A.2.4 All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

PG&E Corporation
Manager, Insurance Department
Mail Code B24H
P. O. Box 770000
San Francisco, CA 94177

¹ Governmental Authorities which have an established record of self-insurance may provide the required coverage through self-insurance.

² The precise amount of insurance coverage will be negotiated by the parties consistent with the risks associated with the specific interconnection.

³ A Governmental Authority qualifying to maintain self-insurance should provide a statement of self-insurance.

APPENDIX B

Routine Test Guidelines and Non-Test Procedures

B.1 Routine Test Guidelines

The following routine test guidelines apply to a Generating Facility capable of making deliveries of 40 kW or more to the PG&E Electric System.

- B.1.1 Applicant shall secondary bench test individual relays by applying the appropriate currents, voltages or frequencies. The relays must be tested at their specified settings to verify the following:
 - B.1.1.1 Minimum operating point at which relay will actuate (minimum pickup).
 - B.1.1.2 Time delay for at least three (3) separate multiples of minimum pickup.
 - B.1.1.3 Phase angle characteristic of directional impedance relays.
 - B.1.1.4 All relays must meet the following tolerances as applicable under test conditions:

<u>Item</u>	Range
Current	± 10%
Voltage	± 10%
Time	± 10%
Frequency	$\pm 0.5 Hz$
Phase Angle	± 5 Degrees

- B.1.2 Applicant shall check each protective relay to confirm that the appropriate breaker and/or main breaker is tripped by the relay contact.
- B.1.3 Applicant shall check all voltage and frequency relays when energized to confirm that the proper secondary potential is applied.
- B.1.4 When the Generating Facility is energized and picking up generation, all relay current coils must be checked by Applicant to confirm that the proper secondary generation current is applied to the relay.

B.2 Non-Test Procedures

- B.2.1 Applicant agrees to the following conditions regarding a Non-Test requested by PG&E.
- B.2.1.1 Applicant shall not re-energize the affected circuits, whether manually or automatically, without first receiving the approval of the Designated PG&E Electric Control Center.
- B.2.1.2 Applicant agrees to install and maintain permanent warning signs on the Generating Facility's main control panel and at each remote operating location where Applicant has remote closing capability. The warning signs shall instruct personnel to contact PG&E before re-closing the circuit.

APPENDIX C

Dispute Resolution and Arbitration

C.1 Negotiation and Mediation

A Party shall initiate dispute resolution by written notice to the other Party describing the dispute and any proposed remedy. As provided in Section 15.10, the Parties agree to seek settlement of all disputes arising under this Agreement by good faith negotiation between officers of the Parties or their delegates before using the other methods of dispute resolution. Unless otherwise agreed in writing, the Parties shall continue to honor their obligations under this Agreement during the course of dispute resolution pursuant to the provisions of this Section C.1 with respect to all matters not subject to such dispute. Within 30 days after notice of dispute is given, each Party shall give written notice to the other Party of its representative(s), including the officer(s) and any delegate(s), and the representatives shall meet and attempt in good faith to resolve such dispute and shall continue to negotiate in good faith in an effort to resolve the dispute. If a settlement is agreed upon as a result of the negotiation, then such settlement shall be recorded in writing, signed by the Parties, and shall be binding on them.

If such representatives fail to resolve a dispute within 30 days after their first meeting, before initiating arbitration proceedings under this Appendix C, the Parties shall seek resolution of a dispute through mediation, with a mediator to be selected by the Parties. The Parties shall meet and confer to establish an appropriate time schedule for mediation, to choose a mediator with at least 10 years' experience in mediating complex commercial disputes, and to agree on any other terms and conditions that will govern the mediation. The mediation shall include the officers of the Parties named in the notice above (even if such officers sent delegates to any prior negotiation) and any other representatives of the Party who participated in the prior negotiations. If a settlement is agree upon as a result of the mediation, then such settlement shall be recorded in writing, signed by the Parties, and shall be binding on them.

C.2 Technical Arbitration

The Parties agree that it is in the best interest of both Parties to seek expedited resolution of arbitrable disputes that are technical in nature. Technical disputes may include, without limitation, disputes centered on engineering issues involving technical planning studies, the need for and Cost of Special Facilities, and the Interconnection Capacity of a Point of Interconnection. Such technical issues may be resolved through expert application of established technical knowledge and by reference to Good Utility Practice and industry standards.

The Party initiating arbitration pursuant to Section C.3 below shall indicate in its notice to the other Party whether it regards the dispute to be technical in nature. If both Parties agree that a dispute is technical in nature, then the Parties shall meet and confer to develop an appropriate timetable and process for expedited resolution of the dispute by a neutral expert, or "technical arbitrator". If the Parties cannot agree that a dispute is technical in nature, or if they cannot agree on a neutral arbitrator, then the Parties shall submit the dispute to arbitration under the procedures set forth in Section C.3 below.

C.3 Arbitration

In the event that a dispute is subject to arbitration under Section 15.10 and is not settled by the Parties within the earlier of 45 days of the first meeting of the Parties with the mediator or 15 days after the conclusion of mediation under Section C.1, the Party that gave notice under Section C.1 shall initiate arbitration by sending written notice to the other Party describing the proposed remedy. Within ten (10) Business Days after receipt of such notice, the Parties shall select a single arbitrator. If the Parties cannot

agree on the selection of an arbitrator, the arbitrator shall be selected by the American Arbitration Association in accordance with its Commercial Arbitration Rules. The arbitrator selected under these procedures shall be a lawyer or retired judge with at least 10 years' experience arbitrating complex commercial disputes.

C.4 Procedures

The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association, except as modified herein or agreed by the Parties in writing.

C.5 Hearing and Decision

After giving the Parties due notice of hearing and a reasonable opportunity to be heard, the arbitrator shall hear the dispute submitted for arbitration and shall provide a reasoned written decision within 90 days or such other date selected by agreement of the Parties. Except for a technical arbitrator, the decision shall conform to applicable law, which includes decisions of a regulatory agency or competent jurisdiction. The decision shall be final and binding upon the Parties; provided, that under no circumstances is the arbitrator authorized to (i) add or modify any rate, term or condition of the Agreement or (ii) render a decision that conflicts with FERC jurisdiction under the Federal Power Act. Judgment may be entered on the decision in any court of competent jurisdiction upon the application of either Party.

C.6 Expenses

Each Party shall bear its own costs and the costs and expenses of the arbitrator shall be borne equally by the Parties.

APPENDIX D

Elections Made By Applicant for New Generators

(check the appropriate line)

D.1 Transmission Line Selector Switches

For Applicant's interconnected to the PG&E Electric System at 60 kV or above, PG&E shall determine whether transmission line selector switches are required to be installed on the PG&E transmission system to which the tap serving the Generating Facility is connected in order to maintain current reliability or operability of PG&E's transmission system. Should PG&E determine that the selector switches are required, the material and installation Cost of the selector switches shall be at PG&E's expense. PG&E shall indicate what its determination is by checking the appropriate line below. Should PG&E determine that the selector switches are NOT required, Applicant then shall have the option of requesting that transmission line selector switches be installed on the PG&E transmission system serving the Generating Facility, and if so requested PG&E will install such switches at Applicant's Cost. Should PG&E determine that transmission line selector switches are not required to maintain the current reliability or operability of its transmission system, and that such selector switches would solely benefit Applicant's service reliability, PG&E may recommend the installation of the transmission line selector switches. These selector switches can be used for restoring service or preventing service interruption to Applicant. (PG&E and Applicant are to check the appropriate boxes below):

- D.1.1 [X] PG&E has determined that transmission line selector switches are required.
- D.1.2 [] PG&E has determined that transmission line selector switches are NOT required.
- D.1.3 [] PG&E has determined that transmission line selector switches are NOT required but recommends that they be installed.
 - D.1.4 [] Applicant has elected to install transmission line switches.
 - D.1.5 [] Applicant has elected NOT to install transmission line switches.

D.2 Standby Generator

In the interest of safety, Applicant must promptly notify PG&E before operating or allowing any Third Party to operate any generation sources capable of parallel operation with the PG&E Electric System which are interconnected to the Interconnection Facilities. Applicant shall comply with the requirements identified in the PG&E Interconnection Handbook, as it may be revised or superseded from time to time, for all such generation sources capable of parallel operation with the PG&E Electric System. For PG&E's information and by way of initial compliance with this section, Applicant represents to PG&E that the following is correct:

- D.2.1 [] Applicant has installed a standby generator.
- D.2.2 [] Applicant does not have and does not plan to install a standby generator.
- D.2.3 [X] While Applicant does not currently have a standby generator installed, it plans to install a standby generator in the future. Applicant will notify the Designated PG&E Electric Control Center before operating this generator in parallel with the PG&E Electric System.

Applicant shall promptly notify PG&E if the conditions or circumstances indicated above change.

APPENDIX E

E.1

Generating Facility Information and Interconnection Capacity

£.1	Genera	ting Facility Into mation
	E.1.1	Generating Facility is (check one) [x] New, [] Existing
		Location of Generating Facility: 1550 Aliviso-Milpitas Road, San Jose, County of Santa California.
د	E.1.3	Description of Generating Facility:
		E.1.3.1 Make: Brush
		E.1.3.2 Model BDAX-7-290ERJT
		E.1.3.3 Type Air Cooled
		E.1.3.4 Serial No
		E.1.3.5 Nameplate Output Rating 60,500 kW
		E.1.3.6 71,176 kVA
		E.1.3.7 13,800 volts, 3 phase, 60 Hertz.
		E.1.3.8 Number of units 4
E.2	Interc	onnection with the PG&E Electric System
	E.2.1	Voltage of the Interconnection 115 kV
	E.2.2	Interconnection Capacity 195,000 kW (228,000 kVA @ 85% pf) ⁴
	E.2.3	Step-up transformer available taps
		high side 120.750 kV 117.875 kV 115.00 kV 112.125 kV 109.25 kV
		low side kV kV 13.80 kV kV kV
		Step-up Transformer taps in use: 115.0 kV HV 13.8 kV LV
,		Step-up Transformer impedance 7.0% on 55 MVA Base

APPENDIX F

PG&E Interconnection Handbook Waivers (Applies to Existing Projects Only)

APPENDIX G

Appendix A of the Reliability Management Agreement

G.1 Definitions

The following definitions apply to this Appendix G:

G.1.1 Member

Any party to the WSCC Agreement.

G.1.2 Reliability Management System (RMS)

The contractual reliability management program implemented through the WSCC Reliability Criteria Agreement, this Appendix G of this Agreement, and any similar contractual arrangement.

G.1.3 Western Interconnection

The area comprising those states and provinces, or portions thereof, in Western Canada, Northern Mexico and the Western United States in which Members of the WSCC or its successor operate synchronously connected transmission systems.

G.1.4 WSCC Agreement

The Western Systems Coordinating Council Agreement dated March 20, 1967, as such may be amended from time to time.

G.1.5 WSCC Reliability Criteria Agreement

The Western Systems Coordinating Council Reliability Criteria Agreement dated June 18, 1999, among the WSCC and certain of its member transmission operators, as such may be amended from time to time.

G.1.6 WSCC Staff

Those employees of the WSCC or its successor, including personnel hired by the WSCC on a contract basis, designated as responsible for the administration of the RMS.

G.2 Reliability Management System

G.2.1 Purpose

In order to maintain the reliable operation of the transmission grid, the WSCC Reliability Criteria Agreement sets forth reliability criteria adopted by the WSCC or its successor to which Applicant and PG&E shall be required to comply.

G.2.2 Compliance

Applicant shall comply with the requirements of the WSCC Reliability Criteria Agreement, including the applicable WSCC reliability criteria set forth in Section IV of Annex A thereof, and, in the event of failure to comply, agrees to be subject to the sanctions applicable to such failure. Such sanctions shall be assessed pursuant to the procedures contained in the WSCC Reliability Criteria Agreement. Each and all of the provisions of the WSCC Reliability Criteria Agreement are hereby incorporated by reference into this Section 2 as though set forth fully herein, and Applicant shall for all purposes be considered a Participant, and shall be entitled to all of the rights and privileges and be subject to all of the obligations of a Participant, under and in connection with the WSCC Reliability Criteria Agreement, including but not limited to the rights,

privileges and obligations set forth in Sections 5, 6 and 10 of the WSCC Reliability Criteria Agreement.

G.2.3 Payment of Sanctions

Applicant shall be responsible for payment of any monetary sanction assessed against Applicant by WSCC pursuant to the WSCC Reliability Criteria Agreement. Any such payment shall be made pursuant to the procedures specified in the WSCC Reliability Criteria Agreement.

G.2.4 Transfer of Control or Sale of Generation Facilities.

In any sale or transfer of control of any generation facilities subject to this Agreement, Applicant shall as a condition of such sale or transfer require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of the Applicant with respect to this Appendix G or to enter into an agreement with PG&E imposing on the acquiring party or transferee the same obligations applicable to Applicant pursuant to this Appendix G.

G.2.5 Publication

Applicant consents to the release by the WSCC or its successor of information related to Applicant's compliance with this Appendix G only in accordance with the WSCC Reliability Criteria Agreement.

G.2.6 Third Parties.

Except for the rights and obligations between the WSCC and Applicant specified in this Appendix G, this Appendix G creates contractual rights and obligations solely between the Parties. Nothing in this Appendix G shall create, as between the Parties or with respect to the WSCC: (1) any obligation or liability whatsoever (other than as expressly provided in this Appendix G), or (2) any duty or standard of care whatsoever. In addition, nothing in this Appendix G shall create any duty, liability, or standard of care whatsoever as to any other party. Except for the rights as a third-party beneficiary under this Appendix G, of the WSCC against Applicant, no third party shall have any rights whatsoever with respect to enforcement of any provision of this Agreement. PG&E and Applicant expressly intend that the WSCC is a third-party beneficiary to this Appendix G, and the WSCC shall have the right to seek to enforce against Applicant any provision of this Appendix G, provided, that specific performance shall be the sole remedy available to the WSCC pursuant to Appendix G of this Agreement, and Applicant shall not be liable to the WSCC pursuant to this Agreement for damages of any kind whatsoever (other than the payment of sanctions to the WSCC, if so applicable), whether direct, compensatory, special, indirect, consequential, or punitive.

G.2.7 Reserved Rights

Nothing in the RMS or the WSCC Reliability Criteria Agreement shall affect the right of the ISO, subject to any necessary regulatory approval, to take such other measures to maintain reliability, including disconnection, which the ISO may otherwise be entitled to take.

G.2.8 Severability.

If one or more provisions of this Appendix G shall be invalid, illegal or unenforceable in any respect, it shall be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability shall not affect the validity of the other provisions of this Agreement.

G.2.9 Termination

Applicant may terminate its obligations pursuant to this Appendix G: (a) if after the effective date of this Agreement, the requirements of the WSCC Reliability Criteria Agreement applicable to Applicant are amended so as to adversely affect the Applicant, provided, that Applicant gives fifteen (15) days' notice of such termination to the ISO, PG&E, and the WSCC within forty-five (45) days of the date of issuance of a FERC order accepting such amendment for filing, provided further that the forty-five (45) day period within which notice of termination is required may be extended by Applicant for an additional forty-five (45) days if

Applicant gives written notice to the ISO and PG&E of such requested extension within the initial forty-five (45) day period; or (b) for any reason on one year's written notice to the ISO, PG&E, and the WSCC.

G.2.10 Mutual Agreement

This Section Appendix G may be terminated at any time by mutual agreement of PG&E and Applicant.

APPENDIX H

Operating Procedures and Limitations

When connected to the PG&E transmission system through the Los Esteros Substation, which is currently contemplated as part of the Northeast San Jose Transmission Reinforcement Project ("Permanent Interconnection"), Applicant shall operate under the confines of the limitations described below.

- A. PG&E studies show that Applicant may cause an emergency overload on the Kifer FMC Junction section of the Kifer San Jose B 115kV transmission line resulting from an outage of the Nortech Kifer 115kV line. PG&E Project T-849 proposes to address this problem in 2004. Applicant shall mitigate any incremental overloads caused by the Generating Facility by successfully implementing one of the following solutions:
 - Requesting that PG&E advance PG&E Project T-849 from 2004 to 2003. Under this scenario,
 Applicant shall pay the costs incurred by PG&E, if any, in advancing Project T-849 from 2004
 to 2003. The Parties shall negotiate in good faith a cost reimbursement agreement to cover any
 such costs, and PG&E shall file such agreement with the FERC.
 - 2. Requesting that PG&E perform a rerate feasibility study consistent with PG&E's rerate process. Under this scenario, Applicant shall pay all costs reasonably incurred by PG&E in performing the feasibility study. The scope of the feasibility study shall be mutually agreed upon by the Parties and shall be narrowly tailored to mitigate the overload. If a rerate is deemed feasible, Applicant shall pay PG&E for all costs reasonably incurred by PG&E in completing the upgrades necessary to obtain such a rerate, as set forth in a separate agreement to be negotiated by the Parties and filed with the FERC.
 - 3. Installing a Special Protection System ("SPS") designed to reduce the Generating Facility output to as low as, but no less than 150 MW, to mitigate the potential overload described above. The proposed SPS must be reviewed and approved by PG&E and the California Independent System Operator Corporation ("ISO"). Under this scenario, Applicant shall pay the costs reasonably incurred by PG&E in installing the SPS.
 - Ensuring that output of the Generating Facility not exceed 150 MW and operating the Generating Facility within such limit, unless otherwise agreed by the Parties in writing.
 - 5. Implementing any other method proposed by Applicant and approved by both PG&E and the ISO. Under this scenario, Applicant shall pay the costs reasonably incurred by PG&E in studying and implementing such method.

For each of the solutions outlined above, the Parties agree that to the extent that PG&E's Facility Cost Report for the Generating Facility dated February 5, 2002 ("FCR") shows that PG&E's Electrical Facilities will be overloaded before the addition of the Generating Facility, Applicant shall be responsible for mitigating only the incremental overloads that it causes. The Parties further agree that to the extent that the FCR shows that PG&E's Electrical Facilities are not expected to be overloaded before the addition of the

⁵ PG&E has not yet constructed the Nortech - Kifer 115kV line. This Appendix H assumes that PG&E will complete construction of the Nortech-Kifer 115 kV line. To the extent that PG&E does not construct the Nortech-Kifer 115 kV line, the provisions contained in this Appendix H with respect to such line shall not apply.

Generating Facility, Applicant shall be responsible for mitigating at least 100% of each overload above the applicable transmission facility rating that is caused by the Generating Facility.

B. Based upon the recent withdrawal of the Florida Power and Light Los Esteros Generation Project ("FPL Project") from the generation interconnection queue, PG&E shall perform a final supplemental 2005 study ("Final Study") to confirm that there are indeed no additional adverse impacts caused by the Generating Facility using all the assumptions set forth in the FCR for the Generating Facility except for the assumptions that relate to the FPL Project. Applicant shall pay PG&E for the actual costs of the Final Study; provided, however, that in no event shall Applicant's cost responsibility for such study exceed \$25,000.

If additional adverse impacts are identified in the Final Study, the Parties agree to revise the section B to account for such impacts. The Parties agree that the Applicant will only be responsible for mitigating any incremental impacts caused by the Generating Facility. The Parties also agree that the Applicant shall not be responsible for mitigating incremental overloads caused by Silicon Valley Power load growth beyond the projected load level of 590 MW. The Parties further agree that if the Final Study shows that PG&E's Electrical Facilities are not expected to be overloaded before the addition of the Generating Facility, Applicant shall be responsible for mitigating at least 100% of each overload above the applicable transmission facility rating that is caused by the Generating Facility. Should the Final Study result in identifying adverse transmission system impacts that can be attributed to the Generating Facility, Applicant and PG&E shall mutually agree to successfully implement one of the following mitigation measures:

- 1. Requesting that PG&E perform a rerate feasibility study consistent with PG&E's rerate process. Under this scenario, Applicant shall pay all costs reasonably incurred by PG&E in performing the feasibility study. The scope of the feasibility study shall be mutually agreed upon by the Parties and shall be narrowly tailored to mitigate the overload. If a rerate is deemed feasible, Applicant shall pay PG&E for all costs reasonably incurred by PG&E in completing the upgrades necessary to obtain such a rerate, as set forth in a separate agreement to be negotiated by the Parties and filed with the FERC.
- 2. Installing a SPS designed to reduce the Generating Facility output to a level to be agreed-upon by the Parties that is adequate to mitigate the identified overload. The proposed SPS must be reviewed and approved by PG&E and the ISO. Under this scenario, Applicant shall pay the costs reasonably incurred by PG&E in installing the SPS.
- 3. Ensuring that output of the Generating Facility not exceed a level to be agreed-upon by the Parties in coordination with the ISO.
- 4. Requesting that PG&E upgrade the applicable transmission line(s) to eliminate any overloads. Applicant shall pay all costs reasonably incurred by PG&E in performing such upgrades, as set forth in a separate agreement to be negotiated by the Parties and filed with the FERC.
- 5. Implementing any other method proposed by Applicant and approved by both PG&E and the ISO. Under this scenario, Applicant shall pay the costs reasonably incurred by PG&E in studying and implementing such method.
- C. To the extent that overload conditions referenced in Sections A or B exist, Applicant agrees not to seek compensation: (1) from PG&E for any necessary curtailment; or (2) through participation in the California ISO market mechanisms for Congestion Management; provided, however, that for any given hour, to the extent that Applicant has already successfully participated in the California ISO Congestion Management market prior to the existence of any of the above conditions, Applicant will be entitled to receive

and retain compensation from the California ISO for the services provided.

Visual Resources Supplemental Testimony

I. INTRODUCTION

- A. Name: Thomas Priestley and Valerie Young
- **B. Purpose:** This supplemental testimony addresses three issues related to visual resources: 1) visual resource issues associated with the compressed construction schedule for the project, 2) the additional mitigation measures suggested by the City of Milpitas in its Opening Brief, and 3) consistency with LORS
- **C. Qualifications:** Our qualifications were provided with our original testimony in this case and are incorporated by reference herein.
- **D. Prior Filings:** Prior filings were addressed in our original testimony in this case, which was filed on March 18, 2002.

II. SUMMARY

A. Visual Issues Associated with Compressed Construction Schedule

The only visual resource issue related to the compressed construction schedule is nighttime construction lighting. During the first two months of the 5 to 6 month construction period, construction activities will take place 24-hours per day. During the remainder of the construction period, construction activities will take place for 20 hours per day (4:00 AM to 2:30 PM and 3:00 PM to 1:00 am). As a consequence of this revised construction schedule, the construction lighting will be visible for more hours per night than would be the case under a daytime only construction schedule. To the extent that it is consistent with safety requirements, nighttime construction lighting will be minimized and will be directed in such a way as to reduce off-site lighting impacts. Because of this attenuation of off-site lighting, the visual impacts of the lighting associated with nighttime construction will be maintained at a level that is less than significant.

B. Additional Visual Mitigation Measures Suggested by City of Milpitas

The Committee's Order directs the Applicant to "confer with Milpitas in an effort to develop an appropriate mitigation plan to screen the proposed project consistent with local LORS." This supplemental testimony addresses each of the visual mitigation measures suggested by the City of Milpitas, as directed by the Committee Order.

1) Milpitas suggests that the Applicant establish "an architectural character that will provide a design theme that will not be regarded as obtrusive or objectionable with regard to visual quality." The suggestion does not provide detail on what type of design theme should be pursued, but indicates that "a sound wall redesign could be a good start in this area."

In response to the sound wall suggestion, the Applicant proposes a revised sound wall design. The revised plan, a copy of which is attached to this testimony, (Figure 1) makes use of an articulated screening wall, berms, and widened landscape areas.

In brief, along the project's southern and eastern perimeters, the revised screening plan makes use of 12-foot high screening walls that are located on the top of 5-foot high berms, creating a screen that is effectively 17 feet in height. The lower 8 feet of the walls are solid masonry, and serve as a sound wall as well as a screening wall. The solid portions of the wall will be made of precast concrete panels, which will be tinted with a pale taupe color. The top 4 feet of the walls consist of a lattice made of unpainted redwood that creates a partial screen. Figure 2 includes an elevation drawing that provides a conceptual representation of the wall's appearance. The wood lattice was used for the top portion of the walls to reduce the walls' apparent mass, and to increase visual interest by using an element made of a natural-appearing material that creates a smaller scaled pattern, and which permits small glimpses of the features behind it. The wall will consist of 16-foot long sections separated by concrete vertical elements. These sections will be combined to create alternating wall segments that will be 64-feet and 96-feet long, which will be articulated using 8 foot setbacks. The alternating panels and setbacks will break up the overall mass of the wall, will create a sense of rhythm, and will create shadowing and a sense of depth.

A planting strip that varies in width from 25-feet to 33-feet or more will be provided in the area in front of the screening wall. This area will include the front slope of the 5-foot high berm on which the retaining walls will be located, as well as a series of 3-foot high mounds located in front of the berms. The configuration of the walls, berm, and planting mounds is illustrated by Figure 2, which includes a cross-section of a segment of the walls and planting zone. This area in front of the walls will be planted in an informal, naturalistic pattern using a mixture of trees and shrubs that include both evergreen and deciduous species. A number of the species used in the planting scheme are the same species found in the tree groupings that now exist in the area near the project site, while the others are native and exotic species that are attractive, fast growing, and aesthetically compatible with the other trees in the scheme and with the surrounding landscape pattern. Plants of a variety of sizes will be installed, including 15-gallon, 24-inch box and 36-inch box trees, and will create

a composition which will, at the time of its installation, include trees up to 12 feet in height. Within 5 years, many of the trees will be 20 feet or more in height. Because of the placement on the berm or the 3-foot high planting mounds, the effective height of these trees at 5 years will be 23 to 25 feet or taller.

The 12-foot high screening wall will continue along the western side of the project site as far as the southern edge of the PG&E switching station. Because space is not available along this frontage of the project site for berming or a landscape strip of expanded width, the screening wall will be located at grade. As on the project site's eastern and southern sides, the wall in this area will be composed of 16-foot long sections that are grouped into longer segments. Although these segments will be articulated, the setbacks will be relatively shallow, reflecting the limited availability of space in this area. The area in front of the western wall will be landscaped with a mixture species and plant sizes similar to those that will be installed in the planting area along the site's eastern and southern perimeters.

The screening wall around the three visible sides of the LECEF site will provide effective, immediate screening of the site's lower elements. The wall's visual effect will be to hide the project's many small, complex, ground level elements from view, reducing the sense of visual clutter and increasing the facility's overall sense of visual unity, creating a composition that is more visually neutral. In addition, with their bands of redwood latticework along the top, their taupe coloring, and the rhythm and shadows created by the deep insets, the walls will be attractive in their own right, and will help to establish a positive architectural character for the facility.

In addition to the screening wall revisions, the project's proposed color treatment has been modified slightly to improve the facility's appearance and integration into its setting. The power plant's structures and major equipment were originally proposed to be a neutral gray color. As a minor modification to the color scheme intended as part of the response to the City of Milpitas' suggestion for enhanced architectural treatment, the Applicant is proposing to paint the HRSG stacks a subtle bluish-gray tone. Use of a slightly contrasting color for the stacks is intended to increase the level of articulation in the facility's overall composition that will add visual interest and reduce the composition's apparent mass. In addition, the color selected is one that will enhance the integration of the stacks into backdrop.

2) Milpitas suggests that the "landscape proposal should be revised." As noted above, the landscape plan would be revised to accommodate the revised screening wall approach. This revised plan addresses Milpitas' suggestion for a revised landscape proposal in that the significantly increased widths of the planting strips on the project's southern and eastern edges provide ample space

for planting mounds and an irregular, naturalistic landscape composition that will blend with its surroundings.

- 3) Milpitas suggests the tree planting schedule be revised to enable the perimeter landscaping to be installed at the beginning of construction rather than at the end. For projects with a several year construction period, this strategy makes some sense, and can permit landscaping to achieve a perceptible level of growth before the project goes into operation. The Applicant routinely adopts this approach for projects with longer construction timelines. For projects like LECEF where the construction period is relatively short (5 to 6 months), the amount of additional growth that could be achieved by planting at the time construction begins would be very limited and would make little noticeable difference. Therefore, an early planting schedule will be implemented only to the extent feasible such that it would not cause additional logistical difficulties and/or schedule delays by having a finished landscape area in the way of construction activities. To achieve the objective that is assumed to have motivated Milpitas to make this suggestion, the landscape plan specifies that a mix of trees of various sizes be used at the time of project installation. This mix includes 24-inch and 36 inch-box trees, which are visibly larger at installation than the 15-gallon trees that are more normally used in landscape installations of this type.
- 4) Milpitas suggests the "placement of the facility should be changed...to see if a better organization would minimize the visual impact without reducing the operation of the plant." The power plant's layout and orientation were carefully designed to reflect both operational and visual considerations, and are not proposed for revision. Modification to the site orientation would require new, and time-consuming, air quality and noise analyses, along with revised visual simulations and would necessitate re-engineering of the facility, which is currently approximately 95 percent complete.
- 5) Milpitas suggests exploring "the option of building a portion of the facility below grade." Similar to the suggestion for re-orientation of the site plan, this suggestion would require new air quality and noise analyses, along with revised visual simulations. In addition, new geotechnical and groundwater analyses would be required to determine if such an option is even feasible. Because the project site is located at a low elevation that is close to San Francisco Bay and one of the region's major creeks, it can be anticipated that a below-grade installation on this site would engender substantial groundwater and drainage issues. For example, Section 8.14.11 of the Water Resources chapter of the AFC indicates that the project site is characterized by a relatively high ground water level, with a ground water table that can be expected to be found at 5 to 7 feet below the ground surface. Because of these conditions, the engineering challenges and additional costs entailed in building the project 15

to 20 feet below grade as suggested by the City of Milpitas would be extraordinary. To build the facility below groundwater and sea level would result in construction techniques similar to those employed in building major bridge footings, such as the Golden Gate and Bay Bridges.

6) Milpitas suggests that the power plant design be integrated with the PG&E Los Esteros substation, suggesting that "This might consolidate the visual character of both facilities into one compact complex. Essentially, the consolidation of the two facilities into "one compact complex" will already be taking place in that the two facilities will be immediately adjoining and will be about as close to each other as is feasible. Both facilities will be landscaped on three sides, creating the appearance of a single complex of electrical equipment surrounded by a mass of screening vegetation.

C. Consistency with LORS

Compressed Construction Schedule

The night lighting effects associated with the compressed construction schedule will not conflict with the provisions of any LORS that are specific to visual resource issues.

Additional Mitigation Suggested by Milpitas

In its Order removing LECEF from the four-month process, the Committee implies that the project is not consistent with local LORS. Although the Committee does not specifically state which LORS the project is not in compliance with, the Committee recommends that the Applicant consider measures that the City of Milpitas has recommended to "...develop an appropriate mitigation plan to screen the proposed project consistent with local LORS." (Los Esteros AFC Committee, Order to Remove AFC from Four-Month Process and to Adopt Twelve-Month Schedule, p.3).

The Committee's impression that the project is in conflict with City of San Jose LORS in a way that might create a finding of a significant visual impact is presumably based on erroneous assertions made by the City of Milpitas. For example, the Milpitas Opening Brief asserts that "The Staff Assessment...concedes that, without the U.S. DataPort, the project would be inconsistent with 15 policies of the City of San Jose General Plan and the Alviso Master Plan. Dr. Clay's testimony confirms this view." (Milpitas Opening Brief, p.6). This statement is misleading. First, Milpitas fails to place Staff's finding of inconsistencies with 15 policies in its full context. Milpitas states that Staff "...tries to wave away the problem (of inconsistency with LORS) by stating: 'However, the visual impacts producing project inconsistencies with local LORS would be mitigated to less than significant levels with timely and effective implementation of staff's conditions of certification.'" In this case, it is

Milpitas that is doing the waving away. Staff's summary conclusion that the impacts producing the project inconsistencies with San Jose's LORS would be mitigated to less than significant levels is based on a detailed analysis that Staff presents in Table 3 on pages 4.12-19 through 4.12-29 of the Staff Assessment's Visual Resources chapter. This analysis evaluates each of the LORS in detail, and assesses the extent to which the project would conform to the LORS. It also identifies the ways and the extent to which proposed mitigation measures would bring the project into compliance.

Milpitas' statement that Dr. Clay's analysis confirms the view that the project would be inconsistent with the 15 San Jose policies identified by Staff is demonstrably false. As has been well substantiated in the Applicant's and Staff's briefs, Dr. Clay did not conduct an analysis of the project's visual impacts, and thus has no factual basis on which to reach conclusions about the these impacts. Furthermore, and most pertinently, the record does not show that Dr. Clay evaluated all 15 policies for which Milpitas claims his analysis supports findings of project inconsistency. Review of Dr. Clay's written testimony finds mention of two policies from the San Jose General Plan; in addition, it includes a passage from the discussion accompanying the General Plan's Scenic Routes and Trails diagram that sets out generalized design objectives. (Clay testimony, Section IV.E). Review of Dr. Clay's exposition on these policies reveals that it is based only on his own personal interpretation of the policies and Plan language. The tone of Dr. Clay's review of the project's relationship to these policies is more one of an uninformed outsider than a systematic assessment based on an understanding of the physical aspects of the project in its setting, and the ways in which the policies are applied by the local jurisdiction. It is notable that his testimony includes no reference to conversations with San Jose City Planning staff about how these policies are generally applied, to reviews of how these policies have been applied to other projects, or more specifically, to how these policies were applied to the US DataPort project of which the LECEF is a part.

In contrast to Dr. Clay's interpretation of the meaning of San Jose LORS, the City of San Jose has stated that its General Plan policies should be interpreted such that only a substantial or significant impact to scenic qualities results in noncompliance. Therefore, under San Jose's interpretation of its own General Plan, supposed inconsistencies with portions of its General Plan will not result in the project's noncompliance with local LORS, unless such inconsistency results in a significant impact.

That Milpitas believes that any inconsistency with LORS requires that the Committee find that the project is not compatible with local LORS is not

⁵ Supplement to Staff Assessment, 4.5-2.

germane. San Jose's General Plan policies were meant to guide its own development and growth. For that reason, the Commission has generally deferred to a local agency's interpretation of its own local ordinances. Milpitas' interpretation of San Jose's General Plan policies is, therefore, irrelevant. Under San Jose's own interpretation, there is no inconsistency between its General Plan policies and the LECEF design that was originally proposed. Findings of consistency with the General Plan and the Alviso Master Plan were made by the City when it approved the US DataPort/LECEF project. Therefore, consideration of the additional visual mitigation measures suggested by the City of Milpitas, except for the sound wall revision, is not necessary to assure compliance with City of San Jose's LORS.

To assist the Committee in gaining assurance that the project will not conflict with City of San Jose visual LORS in a way that could lead to a conclusion that the conflicts are so substantial as to produce a significant visual impact, we have prepared the accompanying table (Table 1). This table reproduces the analysis of each of the local visual resource LORS potentially applicable to projectthat was presented by Staff in the Staff Report as Visual Resources Table 3. This table includes an additional column in which supplemental consistency assessment is presented for the LECEF project, under both the with and without US DataPort conditions. As shown in the table, substantial consistency with San Jose visual LORS is achieved by the project, with the implementation of proposed Conditions of Certification.

III. PROPOSED LICENSING CONDITIONS

Compressed Construction Schedule

The Applicant believes that the construction mitigation requirements proposed by the Commission staff in Proposed Condition of Certification VIS-1 in the Staff Assessment will provide partial mitigation of the visual impacts of the compressed construction schedule. To provide more complete mitigation, we recommend that language be added to Condition of Certification VIS-1 which states: "Prior to the start of construction, the project owner shall submit a written plan to the CPM for review and approval that summarizes the measures that will be undertaken to illuminate construction activities on the site in a way that meets all safety requirements, but which minimizes adverse effects on sensitive off-site viewers."

⁶ Metcalf Final Decision, 330.

Additional Visual Mitigation Suggested by City of Milpitas

If the Commission decides to pursue the additional visual mitigation suggested by the City of Milpitas, further revisions of Condition of Certification VIS-3 will be required.

IV. CONCLUSION

Compressed Construction Schedule

To provide the Commission with a sense of certainty that the lighting associated with the project's nighttime construction activities will not create significant impacts for sensitive viewers located off-site, an amendment to SA Condition of Certification VIS-1 has been proposed. With implementation of this revised Condition, the impacts of nighttime lighting associated with the project's accelerated construction schedule will be kept to a level that is less than significant.

Revised Visual Mitigation Plan

The Applicant proposes revisions to the visual mitigation plan to respond in a substantial and meaningful way to the suggestions offered by the City of Milpitas. The City of San Jose had already found the original project screening design to be in compliance with the City's visual LORS. Implementation of these additional mitigation measures will maintain the project's compliance with San Jose's LORS. If the Commission accepts the above proposed design measures, Condition of Certification VIS-3 will need to be modified as follows:

VIS-3 The project owner shall provide landscaping that is effective in screening the majority of structural forms (not the upper portions of the stacks) from the following key viewing areas: (a) SR-237 and the existing bicycle trail to the south, (b) Zanker Road to the west, and (c) the proposed Bay Trail alignments to the east (Reach 1) and north (Reach 2). Landscaping may be coordinated with the proposed PG&E Los Esteros Substation to take advantage of the proposed substation's landscaping. However, trees and other vegetation must be strategically placed and of sufficient height and density to achieve maximum effective screening of the proposed project structures as soon as possible. In screening project facilities, care must be taken in siting vegetation plantings to avoid blocking vista views of distant ridgelines (for an example, see simulation presented as VISUAL RESOURCES Figure 7).

<u>Protocol</u>: The project owner shall submit a landscaping plan consistent with the visual simulation provided as **VISUAL RESOURCES Figure 7** to the

CPM for review and approval and the City of San Jose for review and comment. The Plan shall include:

- a) 11"x17" color simulations of the proposed landscaping at 5 years as viewed from KOPs 1 and 2; and
- b) a detailed list of plants to be used and times to maturity given their size and age at planting.

The project owner shall not implement the plan until the project owner receives approval of the submittal from the CPM. However, the planting must be completed by start of project operation.

Verification: Prior to first turbine roll and at least 60 days prior to installing the landscaping, the project owner shall submit the plan to the CPM for review and approval and the City of San Jose for review and comment.

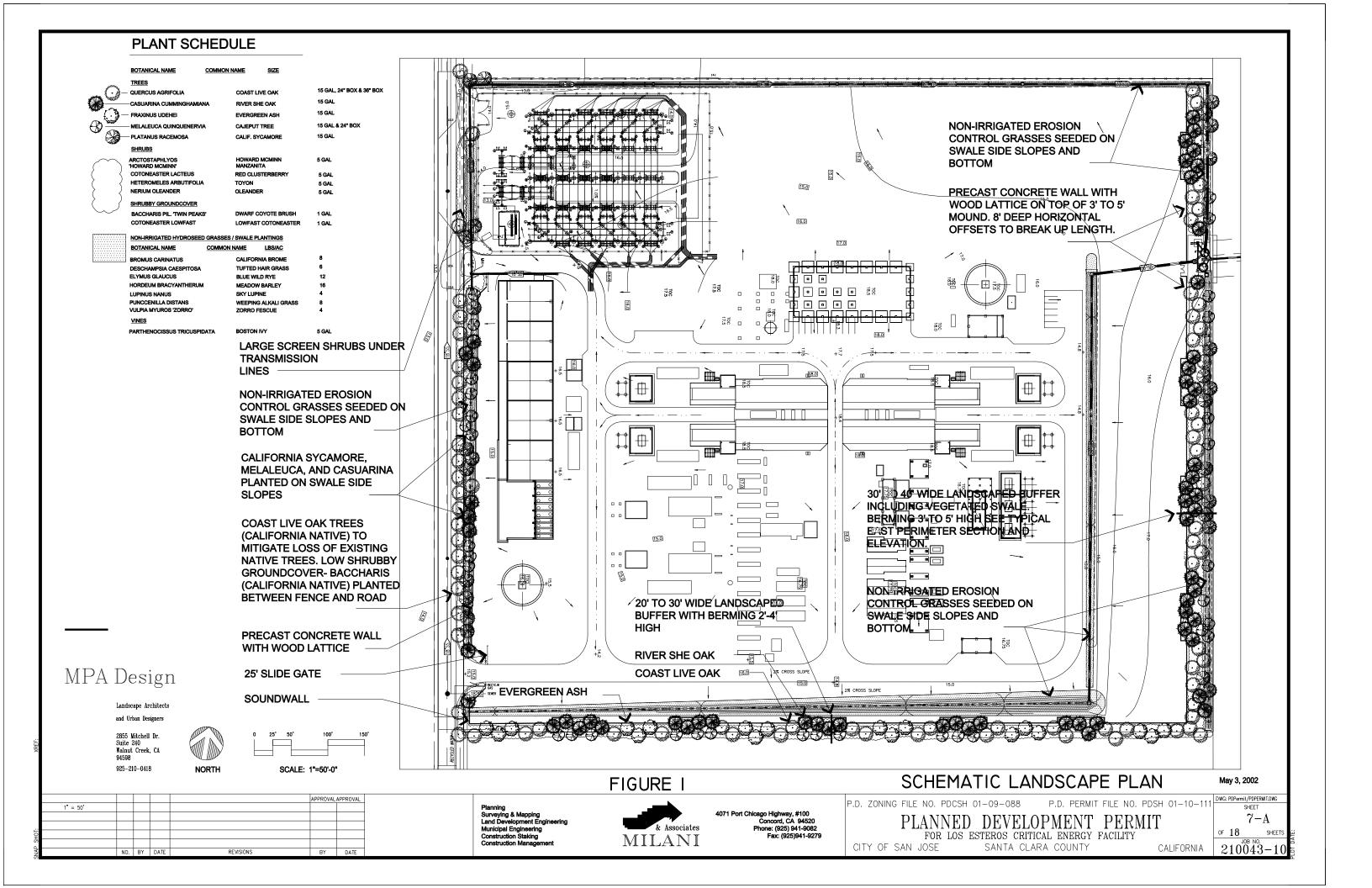
If the CPM notifies the project owner that revisions of the submittal are needed before the CPM will approve the submittal, within thirty (30) days of receiving that notification, the project owner shall prepare and submit to the CPM a revised submittal.

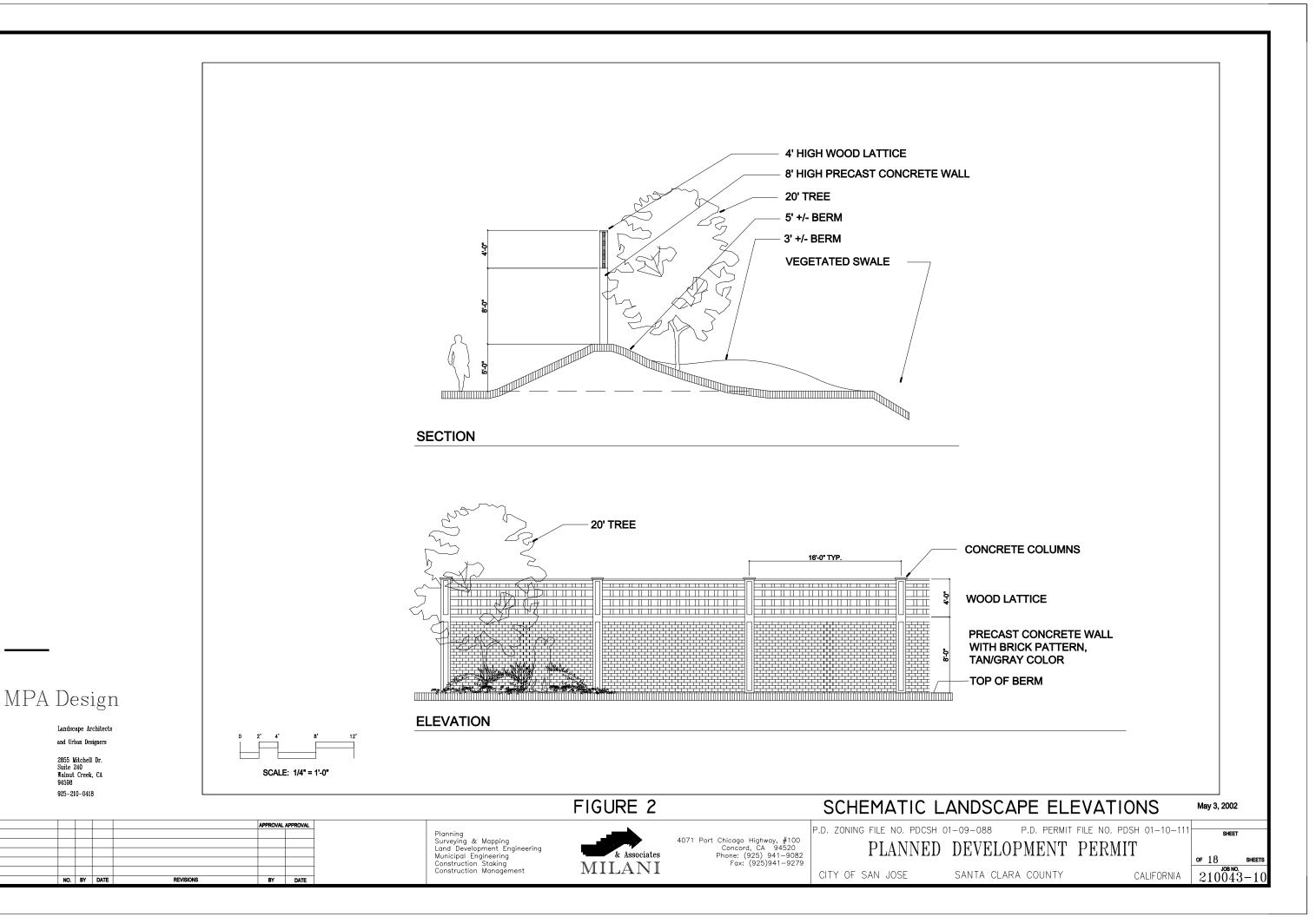
The project owner shall notify the CPM within seven (7) days after completing installation of the landscaping, that the landscaping is ready for inspection."

The VIS-3 provision that "Screening vegetation must be comprised of evergreen species..." conflicts with the City of Milpitas' recommendation that the landscape plan be revised to "...establish a character statement more like that of the existing natural vegetation along the linear corridor just north of the site" and that the landscaping be oriented to helping the project blend in with the surrounding vegetation. The vegetation Milpitas refers to is composed of both evergreen and deciduous species. To assure visual consistency with the surrounding landscape pattern, the proposed planting plan specifies a mix of evergreen and deciduous species that are appropriate to the setting. If only evergreen species were used, as VIS-3 now requires, the plantings would contrast rather than blend with the surrounding landscape pattern. If the specification of "evergreen species" is not eliminated from VIS-3, it will not be possible to achieve compliance with the landscape objectives that the City of Milpitas has recommended.

The VIS-3 provision that "Screening vegetation must be ... provided on all four sides of the proposed project" conflicts with the City of Milpitas' recommendation that the LECEF design integrate with the design of Los

Esteros Substation that PG& E will be developing on land bordering the project site on the north. VIS-3's specification of landscaping on all four sides of the project site would require landscaping on the side of the site that borders the substation. Landscaping placed in this area would not serve a practical function because the substation itself and the landscaping planned along the substation's northern perimeter will screen any views from the north toward the power plant that might become available to the public at such time as the trail proposed along the northern edge of the US DataPort site is developed. In addition, landscaping along the northern edge of the LECEF site would visually separate the power plant from the substation, and would undercut the proposed plan, which treats the two facilities as a single complex of electrical facilities, the outer edges of which are surrounded by a landscaped border.





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Table	1: Supplement to Staff Assessn	nent Visual Resourc	Table 1: Supplement to Staff Assessment Visual Resources Table 3 - Proposed Project's Consistency with Local LORS Applicable to Visual Resources	cal LORS Applicable to Visual Resources
	LORS	Staff's Consistency Determination	Staff's Basis for	Annligant's Assessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	Apprenti s resessantin or consistency
City of	Policy 24: New	With U.S.	With USDP	With USDP
San Jose	development projects	DataPort	The proposed project will result in the loss of	tangle from C
General Man:	should include the preservation of ordinance-	(USDP)	trees on the site. However, as required by this criterion, the applicant has committed to	Consistent
Community	sized and other significant	YES	providing appropriate replacements.	
Development -	trees. Any adverse affect			
	on the health and longevity	Without USDP	Without USDP	Without USDP
Urban Design	of such trees should be		The proposed project will result in the loss of	
	avoided through	YES	trees on the site. However, as required by this	Consistent
	appropriate design		criterion, the applicant has committed to	
	measures and construction		providing appropriate replacements.	
	practices. When tree			
	preservation is not feasible,			
	the project should include			
	appropriate tree			
	replacement.			

LORS Applicable to Visual Resources
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Table 1: Supplement to Staff A

Applicant's Assessment of Consistency		With USDP	Consistent		Without USDP	Consistent	The project site is not immediately adjacent to SR	237 but will be separated from it by an	approximately 400-toot deep segment of the	Applicant's property. Inolieuteless, as a review of simulated views from KOP 1 indicates, the project	facilities will not substantially block sightlines	toward the East Bay Hills, which are the most	attractive aspect of the vista from this area. The	majority of this landform, the upper slopes in	parucular, win reniam unobstructeu.	The screening plan proposed will immediately	provide substantial screening of the project's	lower elements. The wall and plantings will create	an attractive feature in the far foreground of the	view. As the trees grow, they will create tree	masses that relate visually to the existing tree	rows in the vicinity of the site. The trees will not	grow so can as to proce views toward the upper slopes of the hills in the background. Because the	proposed project and proposed screening plan	leave the vista toward the hills substantially	unobstructed, the project will not conflict with	this policy.			
Staff's Basis for	Consistency	With USDP	State Koute (5K) 23/18 a designated Landscaped Throughway. With USDP, the proposed project	would be minimally visible from SR-237 as a result of screening provided by the USDP	structures. Therefore, the proposed project	would not significantly affect vistas and would be consistent with this policy.	•	Without USDP	State Notite (SN) 23/18 a designated Landscaped Thronohway The proposed project could	substantially affect vista views from SR-237 if	project-related landscaping blocks sightlines to	the more distant ridgelines of the north trending	East Bay Hills. The resulting visual impact would	be significant, which would be inconsistent with this policy. Effective and timely implementation	of the applicant's proposed landscape plan as	modified by staff's Condition of Certification VIS-	3 would mitigate the impact to a level that would	not be significant. In any case, the project would	not preserve or enhance the existing vista views	and the residual visual impact would still be	adverse. However, following mingation, the	would not constitute a significant visual impact.	, , , , , , , , , , , , , , , , , , ,							
Staff's Consistency Determination	Before Mitigation/ Conditions	With U.S.	DataPort (USDP)		YES			Without USDP		ON																				
LORS	Objective and Policy Descriptions	Policy 1: Development	within the designated Rural Scenic Corridors and	along designated	Landscaped Throughways	the intent of preserving	and enhancing attractive	natural and man made vistas.																						
	Source	City of	San Jose General Plan:		Aesthetic,	Recreational	Resources -	Scenic Koutes																						

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Source	Objective and Policy Descriptions	Determination Before Mitigation/ Conditions	Consistency	Applicant's Assessment of Consistency
City of San Jose	Policy 4: Any development occurring adjacent to	With USDP	With USDP The proposed project would be substantially	With USDP
General Plan:	Landscaped Throughways	YES	screened from view by USDP structures and landscaping. Therefore, the proposed project	Consistent
Aesthetic,	interesting and attractive		would be consistent with this policy.	Without USDP
Recreational	promote a high standard of	Without USDP	Without USDP	Consistent
Resources -	architectural excellence.	(The proposed project would have a complex industrial appearance that would substantially	see discussion above. In addition, with the regular setbacks of the screening wall creating a
(cont'd)		O N	detract from the quality of views from SR-237,	regular articulation and sense of rhythm, and
`			which is a designated Landscaped Throughway.	with the detailing provided by the latticework on
			The resulting visual impact would be significant	top of the wall, the wall, along with the planting
			which would be inconsistent with this policy.	mounds and the trees in front of it, will create an
			Errective and timely implementation of the applicant's proposed landscape plan as modified	attractive reature in the lar foreground of the view. In view of the high quality of the design of
			by staff's Condition of Certification VIS-3 would	the screening wall and the landscaping
			mitigate the impact to a level that would not be	accompanying it, as well as the further measures
			significant. However, the residual impact would	to use color to enhance the appearance of the
			still be adverse and the project would not be perceived as having attractive design qualities or	relatively high degree of consistency with this
			promoting a high standard of architectural	policy.
			excellence. Following mitigation, the proposed	
			project's inconsistency with this policy would not constitute a significant visual impact.	

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Annlicant's A scocement of Consistency	AFFICALIST STANDARD CONTROLLEY	With USDP	Consistent		Without USDP	Consistent	See discussion above. The project will have an		attractive element at the entrance into San Jose	from Milpitas.							=======================================			
Staff's Basis for	Consistency	With USDP The proposed project would be substantially	screened from view by USDP structures and landscaping. Therefore, the proposed project	would be consistent with this policy.	Without USDP	The proposed project would have a complex	industrial appearance that would substantially	detract from the quality of views from SR-237,	which is a designated Landscaped Throughway.	which would be inconsistent with this police	Winch would be inconsistent with this poncy.	Effective and unlely implementation of the	applicant s proposed tandscape pian as modified by staff's Condition of Certification VIS-3 would	mitigate the impact to a level that would not be	significant. However, the project would not be	perceived as providing an attractive gateway to	the City and the residual visual impact would still	be adverse. Following mitigation, the proposed	project's inconsistency with this policy would	not constitute a significant visual impact.
Staff's Consistency Determination	Before Mitigation/ Conditions	With USDP	YES			Without USDP	(ON												
LORS	Objective and Policy Descriptions	Policy 5: Any development	along Landscaped Throughways entering the	provide attractive	gateways to the City.															
	Source	City of	San Jose General Plan:	Aesthetic,	Cultural and	Kecreational	Scenic Routes	(conf'd)												

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	LORS	Staff's Consistency Determination	Staff's Basis for	Applicant's Assessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
City of	Policy 1: The City should	With USDP	With USDP	With USDP
San Jose	control land development	,	The proposed project would be substantially	
General Plan:	along designated Trails and Pathways Corridors in	YES	screened from view from the existing bicycle trail and the proposed Bay Trail by USDP structures	Consistent
Aesthetic, Cultural and	order to provide sufficient trail right-of-way and to		and landscaping. Therefore, the proposed project would be consistent with this policy.	Without USDP
Recreational	ensure that new			
Resources -	development adjacent to	Without USDP	Without USDP	Consistent
Trails and	the corridors does not		The proposed project would have a complex	The project site is not immediately "adjacent" to
<u>Pathways</u>	compromise safe trail	NO	industrial appearance that would substantially	either the existing bicycle trail or any of the
	access nor detract from the		detract from the quality of views from the existing	proposed alignments for trails that might be
	scenic and aesthetic		bicycle trail and proposed Bay Trail. The resulting	developed at some point in the future. The bicycle
	qualities of the corridor.		visual impact would be significant which would	trail is more than 400 teet from the edge of the
			be inconsistent with this policy. Effective and	project site, and the proposed alignments of
			timely implementation of the applicant's	potential future trails are from 600 to over 1,200
			proposed landscape plan as modified by staff's	feet distant from the site. Nonetheless, the
			Condition of Certification VIS-3 would mitigate	screening plan will immediately provide
			the impact to a level that would not be significant.	substantial screening of the project's lower
			However, the residual visual impact would still	elements. As the trees grow, they will create
			be adverse and the proposed project would	naturalistic appearing tree masses that relate
			detract somewhat from the scenic and aesthetic	visually to the existing tree rows in the vicinity of
			qualities of the corridor. Following mitigation,	the site. Given the use of trees with a variety of
			the proposed project's inconsistency with this	foliage types, and which in some cases produce
			policy would not constitute a significant visual	fruit and flowers and attract birds and other
			impact.	wildlife, the trees will be a feature that will
				provide a degree of visual interest in close to mid-
				range views. The wall, combined with the berms
				and plantings, will create an attractive feature in
				views toward the project site from the existing
				bicycle trail and any other trails that may, at some
				indeterminate point in the future, be developed in
				the vicinity. The project, therefore, is consistent
				with this policy.

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whisiand to the Assessment of Consistency	The second of th	With USDP	Consistent	Without USDP	Consistent	Simulated views from KOP 1 indicate that the project facilities do not substantially block sightlines toward the East Bay Hills, which are the most attractive aspect of the vista from this area. The majority of this landform, the upper slopes in particular, will remain unobstructed. The screening plan will immediately provide substantial screening of the project's lower elements. The wall and plantings will create an attractive feature in the far foreground of the view. As the trees grow, they will create tree masses that relate visually to the existing tree rows in the vicinity of the site. The trees will not grow so tall as block views toward the upper slopes of the hills in the background. Because the proposed project and the currently proposed screening plan leave the vista toward the hills substantially unobstructed, yet screen the views toward the project's more complex elements, the project is entirely consistent with this policy.
Staff's Basis for	Consistency	With USDP	The proposed project would be substantially screened from view from SR-237 by USDP	structures and landscaping. Therefore, the proposed project would be consistent with this	policy.	While the proposed landscaping as conditioned by staff's Condition of Certification VIS-3 would effectively screen the project's unsightly industrial character from SR-237 views, the applicant-proposed landscaping could also substantially affect vista views from SR-237 if sightlines to the more distant ridgelines of the north trending East Bay Hills are blocked. The resulting visual impact would be significant which would be inconsistent with this policy. Timely and effective implementation of the applicant's proposed landscape plan as modified by staff's Condition of Certification VIS-3 would mitigate the impact to a level that would not be significant. In any case, the project would not provide a foreground framework or a clearing for longer distance views. However, the proposed project's inconsistency with this policy would not constitute a significant visual impact.
Staff's Consistency Determination	Before Mitigation/ Conditions	With USDP	YES		Without USDP	PARTIALLY
LORS	Objective and Policy Descriptions	Landscaping in Urban	used to supplement and	Landscaping along these thoroughfares will provide	a foreground framework or	a clearing for longer distance views and will also screen unsightly views or uncharacteristic land uses.
	Source	City of	General Plan:	Scenic Routes and Trails	Diagram -	Scenic Routes

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Annlicant's Assassment of Consistency		With USDP	Consistent	Without USDP	Consistent	In view of the high quality of the design of the	screening wall and the landscaping	accompanying it, the function incasures to use color to enhance the appearance of the project	facilities, and the fact that the project will not	substantially block the vista from Highway 237	toward the hills to the east, the project will have	a high degree of consistency with this policy.									
Staff's Basis for	Consistency	With USDP The proposed project with the USDP	screened from view from SR-237 by USDP structures and landscaping. Therefore, the	proposed project would be consistent with this policy.	Without USDP	The proposed project would have a complex	industrial appearance that would substantially	which is a designated Landscaped Thronohway	The resulting visual impact would be significant	which would be inconsistent with this policy.	Effective and timely implementation of the	applicant's proposed landscape plan as modified	mitigate the impact to a level that would not be	significant. However, the residual impact would	still be adverse and the project would not be	perceived as being attractive, having a high	quality of architectural design, or preserving	existing scenic character. Following mitigation,	the proposed project's inconsistency with this	policy would not constitute a significant visual	impact.
Staff's Consistency Determination	Before Mitigation/ Conditions	With USDP	YES		With out 11CDD	Without Codi	NO														
LORS	Objective and Policy Descriptions	Commercial and industrial	Urban Throughways should be attractive and	have a high quality of architectural design. These	developments should be sufficiently spaced to	preserve the scenic	character of the	thoroughtare.													
	Source	City of	General Plan:	Scenic Routes and Trails	Diagram - Scenic Routes	(cont'd)															

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		Determination	Staff's Basis for	Applicant's Assessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
Alviso Master	Industrial/Non-Industrial	With USDP	With USDP The prepared project would be screened from	With USDP
Liant.	Setbacks and buffers	YES	Coyote Creek by USDP structures and landersaing. Therefore the proposed project	Consistent
Policies	protect environmental resources (e.g., Coyote		would not cause impacts to the visual resources of Coyote Creek.	Without USDP
	Creek) and "sensitive uses" (e.g., residential, day care,	Without HSDP	Without USDP	Consistent
	and school uses) from		The Master Plan discussion of this objective states	The project site has a substantial setback from
	potential negative impacts of industrial use.	ON	that It is important that the potential environmental impacts of industrial activities be	Coyote Creek, at its closest point, the site is over 600 feet from the creek, and most points along the
			iningated so as not to narm nearby natural resources."	CLECK are considerably the first month the site.
				The screening wall, combined with the berms and
			The proposed project would have a complex	plantings, will create an attractive feature in views
			industrial appearance that would substantially detract from the quality of views from the present	some indeterminate point in the future, be
			and future trails in the vicinity of the Coyote	developed on designated trail alignments along
			Creek corridor. The resulting visual impact would	Coyote Creek's western edge. As a consequence ,
			be significant which would be inconsistent with this policy. Although effective and timely	with the screening plan currently proposed, the project would not be inconsistent with this
			implementation of the applicant's proposed	policy.
			landscape plan as modified by staff's Condition of	
			Certification VIS-3 would substantially mitigate	
			the impact on views from the Coyote Creek	
			corridor, the residual impact would still be	
			adverse though not significant. Following	
			mitigation, the proposed project's inconsistency	
			with this policy would not constitute a	
			significant visual impact.	

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Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
Alviso Master	Industrial/Non Industrial	With USDP	With USDP	With USDP
Plan:	Relationships Policy 2: The light industrial areas	YES	The proposed project would be screened from Covote Creek by USDP structures and	Consistent
Land Use Policies	located north of State Street and adjacent to Coyote		landscaping. Therefore, the proposed project would not cause impacts to the visual resources	
(cont'd)	Creek should mitigate		of Coyote Creek.	Without USDP
	environmental impacts to	Without USDP	Without USDP	Consistent
	nearby natural resources.	Ç	As stated in the discussion of this policy, the	The project site has a substantial setback from Courte Creek: at its closest noint, the site is over
		Q.	ment of this pointy is to protect sensitive manuals from neighboring industrial activities.	600 feet from the creek, and most points along the creek are considerably further from the site.
			The proposed project would have a complex industrial approarance that would enterantially	The screening wall, combined with the berms and
			detract from the quality of views from the present	plantings, will create an attractive feature in views
			and future trails along Coyote Creek. The	toward the project site from any trails that may, at some indeterminate noint in the future. be
			which would be inconsistent with this policy.	developed on designated trail alignments along
			Although effective and timely implementation of	Coyote Creek's western edge. As a consequence,
			the applicant's proposed landscape plan as	with the screening plan currently proposed, the
			modified by staff's Condition of Certification VIS-3 would substantially mitigate the impact on	project would not be inconsistent with this policy.
			views from Coyote Creek, the residual impact	
			would still be adverse though not significant.	
			Following mitigation, the proposed project's	
			inconsistency with this policy would not	
			constitute a significant visual impact.	

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Annlicant's Accessment of Consistency		With USDP Consistent	Consistent The screening plan currently proposed will immediately provide substantial screening of the project's lower elements. With the setbacks creating a regular articulation and sense of rhythm, and with the detailing provided by the latticework on top of the wall, the wall, along with the planting mounds and the trees in front of it, will create an attractive feature in the far foreground of the view. In view of the high quality of the design of the screening wall and the landscaping accompanying it, as well as the further measures to use color to enhance the appearance of the project facilities, the project will have an attractive appearance in views from Zanker Road and Highway 237. As a consequence the project may not contribute to the achievement of this policy's objectives in a substantial way, but at the same time, it will not detract from them.
Staff's Basis for	Consistency	With USDP The proposed project would be substantially screened from view by USDP structures and landscaping. Therefore, the proposed project would be consistent with this policy.	Without USDP The proposed project would have a complex industrial appearance that would substantially detract from the quality of views from SR-237. The resulting visual impact would be significant which would be inconsistent with this policy. Effective and timely implementation of the applicant's proposed landscape plan as modified by staff's Condition of Certification VIS-3 would mitigate the impact to a level that would not be significant. However, the residual impact would still be adverse and the project would not be perceived as providing an attractive gateway to the City. Following mitigation, the proposed project's inconsistency with this policy would not constitute a significant visual impact.
Staff's Consistency Determination	Before Mitigation/ Conditions	With USDP YES	Without USDP NO
LORS	Objective and Policy Descriptions	Gateway Entrances Objective: Development located near Highway 237 along both sides of Gold	Zanker Road should foster a "gateway" feel through building orientation, signs, trees, landscaping, and other features.
	Source	Alviso Master Plan: Land Use	(conf d)

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Annlicant's Assessment of Consistency		With USDP	Consistent		Without USDP	Consistent	The project site has a substantial setback from	Coyote Creek, as noted above. In addition, the	proposed screening wall and landscaping will	create an attractive reature in views toward the project site from any trails that may at some	indeterminate point in the future, be developed	on designated trail alignments along Coyote	Creek's western edge. As a consequence, with	the screening plan currently proposed, the	project would not be inconsistent with this	policy.									
Staff's Basis for	Consistency	With USDP	The proposed project would be screened from Coyote Creek by USDP structures and	landscaping. Therefore, the proposed project would not cause impacts to the visual resources	of Coyote Creek.	Without USDP	The intent of this objective is to protect natural	features from environmental degradation such	that they can continue to be enjoyed by existing	and future residents.	The proposed project would have a complex	industrial appearance that could substantially	detract from the quality of views from the present	and future trails along Coyote Creek. The	resulting visual impact would be significant	which would be inconsistent with this policy.	Although effective and timely implementation of	the applicant's proposed landscape plan as	modified by staff's Condition of Certification VIS-	3 would substantially mitigate the impact on	views from Coyote Creek, the residual impact	would still be adverse though not significant.	Following mitigation, the proposed project's inconsistency with this policy would not	constitute a significant visual impact.	•
Staff's Consistency Determination	Before Mitigation/ Conditions	With USDP	YES			Without USDP		ON																	
LORS	Objective and Policy Descriptions	Environmental Protection	<u>Objective</u> : New development should	contribute to the protection and preservation of	Alviso's natural amenities	Creek].	-																		
	Source	Alviso Master	Plan:	Land Use Policies	(cont'd)																				

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	LORS	Staff's Consistency Determination	Staff's Basis for	Annlicant's Assessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
Alviso Master	Design Objective: Given	With USDP	With USDP	With USDP
Plan:	the high visibility of most	XEC	The proposed project would be substantially	teodofice
Design	of this area, development	1 E.S	screened from view by USDL structures and landscaping. Therefore, the proposed project	CONSISTEN
Guidelines -	fit in the context of the		would be consistent with this policy.	
Lands Outside	larger community; and		4	Without USDP
ot the Village	should reflect some of the	Without USDP	Without USDP	
Area	elements and materials of		The proposed project would have a complex	Not Applicable
	seaside styles to contribute	NO	industrial appearance that would not reflect the	
	to Alviso's sense of place.		elements and materials of Alviso's seaside styles	The City of San Jose has interpreted the
			and would detract from the quality of views. The	requirement for the use of "seaside" elements and
			resulting visual impact would be significant	materials on lands outside of the Alviso Village
			which would be inconsistent with this policy.	area to be applicable primarily to commercial
			Although effective and timely implementation of	buildings, not to industrial facilities such as the
			the applicant's proposed landscape plan as	LECEF. This interpretation is consistent with the
			modified by staff's Condition of Certification VIS-	City's PD Zoning approval for the project, which
			3 would substantially mitigate the impact on local	did not require any form of seaside-themed
			views, the project would still not be perceived as	architectural treatment for the LECEF. Therefore ,
			reflecting Alviso's seaside styles. However,	this policy may be applicable to the US DataPort
			following mitigation, the proposed project's	buildings, but not the LECEF.
			inconsistency with this policy would not	
			constitute a significant visual impact.	

Table 1	: Supplement to Staff Assessn	nent Visual Resourc	Table 1: Supplement to Staff Assessment Visual Resources Table 3 - Proposed Project's Consistency with Local LORS Applicable to Visual Resources	al LORS Applicable to Visual Resources
	LORS	Staff's Consistency Determination	Staff's Basis for	Applicant's Assessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
Alviso Master Plan: Design Guidelines - Lands Outside of the Village Area Industrial Development	Development Standards – Height: Maximum 45 feet and two stories above flood elevation, except that for properties located between the Water Pollution Control Plant lands and the Guadalupe River, and on the former Cargill landfill site, buildings as tall as 90 feet may be allowed if all of the following conditions are met: 1. The building is set back at least 500 feet from Wilson Way. Tony P. Santos Street, and Grand Boulevard. 2. The building is welldesigned and contributes positively to the Alviso area; and Such building heights facilitate the transfer of development intensity away from the baylands and environmentally sensitive areas in the vicinity of the Alviso village to locations closer to Highway 237 in order to achieve habitat preservation or other environmental	With USDP NO NO NO	Although the proposed project would be substantially screened from view by USDP structures and landscaping, the project would still exceed the 45-foot height limitation and would not contribute positively to the visual quality of the Alviso area. Therefore, the proposed project would not be consistent with this policy. Without USDP The proposed project's combustion turbine stacks would exceed the 45-foot height limitation and the structure would not contribute positively to the visual quality of the Alviso area as required in condition #2. Timely and effective implementation of the applicant's proposed landscape plan as modified by staff's Condition of Certification VIS-3 would mitigate the adverse impact on visual quality but would not create a circumstance where the project would make a positive contribution to the Alviso area. However, following mitigation, the proposed project's inconsistency with this policy would not constitute a significant visual impact.	Not Applicable A General Plan Amendment for the combined US DataPort/LECEF property, and approved by the City of San Jose in November 2001, modified the Alviso Master Plan to allow maximum building heights of 100 feet. As a consequence, because all project facilities, including the stacks, are less than 100 feet in height, there are no conflicts with the current height standards applicable to the site.
	protection objectives.			

Visual Resources
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Applicant's Assessment of Consistency	Consistent Even though the building unit components of the facilities (not the equipment units) would not use building materials recommended by the Alviso Master Plan, these structures would not be visible from areas accessible to the public. Without USDP Consistent See above discussion. The buildings will not be visible from areas accessible to the public, and the proposed screening plan will provide further shielding of the facilities from view. Thus, the project is consistent with this policy.
Staff's Basis for Consistency	With USDP The proposed project would have only two buildings, which would be located within the power plant complex. Most structures are actually "equipment." Project buildings and equipment would generally be surfaced with metal siding, which would not be consistent with this policy. However, the proposed facilities would be substantially screened from view by the U.S. DataPort buildings and landscaping and effective implementation of staff's Condition of Certification VIS-2 would mitigate the visual impact to a level that would not be significant. Without USDP The proposed project would have only two buildings, which would be located within the power plant complex. Most structures are actually "equipment." Project buildings and equipment would generally be surfaced with metal siding, which would not be consistent with this policy. However, timely and effective implementation of staff's proposed Condition of Certification VIS-2 and the applicant's proposed landscape plan as modified by staff's Condition of Certification VIS-3 would mitigate the visual impact to a level that would not be significant.
Staff's Consistency Determination Before Mitigation/	With USDP NO NO NO
LORS Objective and Policy Descriptions	Development Standards - Allowable Building Materials: • Formed concrete with scoring or an embossed wood grain appearance • Concrete blocks or bricks • Stucco, in simple application • All types of wood siding • Composition shingle, and metal roof materials • Glass as an accent material and for windows
Source	Alviso Master Plan: Design Guidelines - Lands Outside of the Village Area Industrial Development (conf' d)

		Staff's		
	LORS	Consistency Determination	Staff's Basis for	Annlicant's Assessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
Alviso Master	Development Standards -	With USDP	With USDP	With USDP
ı lail.	Parking: The majority of		Parking for the proposed project would be located	
Design	the surface parking area for	YES	at the rear (north) of the project site between the	Consistent
Cuidelines -	any industrial development		cooling tower and the service administration	The parking area will be screened from view by
Tande Outside	should be located at the		building. Also, a majority of the site would be	the proposed screening wall and landscaping.
of the Village	side and/or rear of the		screened from view by the U.S. DataPort	Thus, the project is consistent with this policy.
Of the vinage	building. Parking areas		structures and landscaping. Furthermore, as	
Med	adjoining the street should		required in staff's proposed Condition of	
Todanton	be screened by the		Certification VIS-3, the proposed project site	Without USDP
Illusulai D	placement of trees, a low		would have vegetative screening around all four	
Development	hedge or a wall within the		sides.	Consistent
(cont a)	front setback area.	Without USDP		With the project screening currently proposed, the
			Without USDP	parking area would not be visible from outside
		NO	Parking for the proposed project would be located	the site. Thus, the project is consistent with this
			at the rear (north) of the project site between the	policy.
			cooling tower and the service administration	
			building. Also, as required in staff's proposed	
			Condition of Certification VIS-3, the proposed	
			project site would have vegetative screening	
			around all four sides.	

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	LORS	Staff's Consistency Determination	Staff's Basis for	mustismo) to thomasosa Asturoilun A
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	Application of Assessment of Collobotetics
Alviso Master Plan:	<u>Landscaping Policy 1:</u> Landscaping should make	With USDP	With USDP The project's proposed tree plantings would	With USDP
Landscaping Policies	a strong connection between the natural and built environment and preserve Alviso's existing character.	FAKIJALLI	Impart an appearance that would be similar to that of the nearby riparian trees along Coyote Creek (see VISUAL RESOURCES Figure 12). This similar vegetative character would be consistent with Policy 1. However, the tree	With the project screening currently proposed, the tree planting would relate visually to the existing corridor of riparian vegetation along Coyote Creek. Thus, the project would be consistent
			plantings would not be consistent with the open, low growing vegetation that generally characterizes Alviso's vegetative appearance.	with this policy. Without USDP
		Without USDP PARTIALLY	Without USDP The project's proposed tree plantings would impart an appearance that would be similar to that of the nearby riparian trees along Coyote Creek (see VISUAL RESOURCES Figure 12). This similar vegetative character would be consistent with Policy 1. However, the tree plantings would not be consistent with the open, low growing vegetation that generally characterizes Alviso's vegetative appearance	Partially Consistent With the project screening currently proposed, the tree planting would relate visually to the existing corridor of riparian vegetation along Coyote Creek, but the project would decrease the visibility of this vegetation to some extent. Therefore, the project is partially consistent with this policy.

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	LORS	Staff's Consistency Determination	Staff's Basis for	Annlicant's Accessment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	Applicant s assessment of Consistency
Alviso Master	Landscaping Policy 2:	With USDP	With USDP	With USDP
Plan:	Landscaping should be simple and minimal to	YES	The proposed project would be substantially screened from view from SR-237 by USDP	Consistent
Landscaping Policies	reflect Alviso's open character.		structures and landscaping. Therefore, the proposed project would not be inconsistent with	
(cont'd)	a)Trees should be used		this policy.	
	sparingly to maintain the open views of Alviso.	Without USDP	Without USDP	Without USDP
	•	Ç	The proposed project would have a complex	Consistent
		O _N	incustrial appearance that could substantially detract from the quality of views in the vicinity of	Based on close reading of the text accompanying
			Alviso. To mitigate the industrial visual character	this policy in the Alviso Master Plan, it is clear
			of the proposed project, the applicant has	that the project, particularly in light of its current
			proposed to screen the structures with trees. The	screening plan, will not conflict with this policy. Although the policy states "trace should be used
			proposed landscaping has the potential to block vieta views from SR-237 to the more distant	states are smouth be used sparingly," the accompanying text qualifies this
			ridgelines of the north trending East Bay Hills.	by stating that this is true in areas located far from
			Timely and effective implementation of the	buildings. In the case of this project, the fact that
			applicant's proposed landscape plan as modified	the trees will be surrounding the perimeter of the project site appears to be in keeping with the
			by start is contained to certification vists would mitigate the visual impact to a level that would	overall thrust of the policy. Given the naturalistic
			not be significant. However, the proposed	nature of the planting design and the heavy
			project and its landscaping would partially	reliance on native species, the project will be
			reduce the existing open view, which would not	consistent with this policy's call for simplicity in
			be consistent with this policy.	ranuscaping, and the accompanying text s recommendation that native plants be
				incorporated into landscape designs.

Applicant's Assessment of Consistency	Consistent Consistent The project would be substantially screened from view from SR-237 by USDP structures and landscaping. Therefore, the project would be consistent with this policy. Without USDP Consistent Consistent The proposed screening plan will substantially screen views of the project from nearby viewing areas. Therefore, the project would be consistent with this policy.
Staff's Basis for Consistency	With USDP The proposed project would be substantially screened from view from SR-237 by USDP structures and landscaping. Therefore, the proposed project would not be inconsistent with this policy. Without USDP The proposed project would have a complex industrial appearance that could substantially detract from the quality of views in the vicinity of Alviso. To mitigate the industrial visual character of the proposed project, the applicant has proposed to screen the structures with trees. Timely and effective implementation of the applicant's proposed landscape plan as modified by staff's Condition of Certification VIS-3 would ensure that that the project would be consistent with this policy.
Staff's Consistency Determination Before Mittigation/ Conditions	With USDP YES Without USDP YES
LORS Objective and Policy Descriptions	Landscaping Policy 3: Landscaping should be used to screen unattractive uses and soften the effect of taller buildings due to the flood protection requirements.
Source	Alviso Master Plan: Landscaping Policies (cont' d)

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	LORS	Staff's Consistency Determination	Staff's Basis for	Annlicant's Accossment of Consistency
Source	Objective and Policy Descriptions	Before Mitigation/ Conditions	Consistency	
Alviso Master Plan:	Landscaping Policy 4: Landscaping should not	With USDP		With USDP
Landscaping Policies (cont'd)	block views of the rivers, natural riparian areas, or marshlands.	YES		Consistent The project would be substantially screened from view from SR-237 and Zanker Road by USDP structures and landscaping. Therefore, the project would be consistent with this policy.
		Without USDP		
		ON	With USDP The proposed project would be substantially	Without USDP
			screened from view from SR-237 and Zanker	Consistent
			Road by USDP structures and landscaping. Therefore, the proposed project would not be	With the project screening currently proposed, the tree planting would relate visually to the existing
			inconsistent with this policy.	corridor of riparian vegetation along Coyote
			Without USDP	Creek, but the project would decrease the visibility of this vegetation to some extent in some
			The proposed project structures and landscaping would block views of the Covote Creek rinarian	views from Highway 237 and Zanker Road.
			corridor from Zanker Road and eastbound SR-	vill not block all views of this feature. The
			237.	riparian corridor along the creek in the area north of Highway 237 will remain visible from the areas
				along the highway to the east of the project site, as
				well as from the Veritas office complex on the east
				toward the riparian corridor from Zanker Road
				will continue to be visible in the area to the north
				of the site. Therefore, the project is in
				substantial compliance with this policy.

DECLARATION OF

Thomas Priestley

I, Thomas Priestley, declare as follows:

- 1. I am presently employed by CH2M HILL Incorporated as Senior Environmental Planner.
- 2. A copy of my professional qualifications and experience presented in my previously filed testimony and incorporated by reference herein.
- 3. I prepared the attached supplemental testimony on Visual Resources for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: May 1, 2002	Signed: June J. Priestley			
		J		
At: Oakland, California				

DECLARATION OF VALERIE J. YOUNG, AICP

I, VALERIE J. YOUNG, declare as follows:

- 1. I am presently employed by CH2M HILL Incorporated as a Senior Environmental Planner and Vice President.
- 2. A copy of my professional qualifications and experience presented in my previously filed testimony and incorporated by reference herein.
- 3. I co-authored the attached supplemental testimony on Visual Resources for Los Esteros Critical Energy Facility based on my independent analysis and my professional experience and knowledge.
- 4. It is my professional opinion that the prepared testimony is valid and accurate with respect to the issue(s) addressed herein.
- 5. I am personally familiar with the facts and conclusions related in the testimony and if called as a witness could testify competently thereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated	: May 10, 2002	Signed:	Valene J. Your		
		_		J (
At:	San Jose, CA				

BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE OF CALIFORNIA

{PRIVATE})
Application for Certification for the) DOCKET NO. 01-AFC-12
Los Esteros Critical Energy Facility) (AFC ACCEPTED 09/24/01)
(Los Esteros)) (REVISED 3/6/02))
I, Anar Bhimani, declare that on May 10, 2002 I d Los Esteros Critical Energy Facility Supplementa	al Testimony in the United States mail at
Sacramento, CA with first class posta	age thereon fully prepaid and addressed to the
following:	
DOCKET UNIT	
Send the original signed document plus below:	the required 12 copies to the address
CALIFORNIA ENERGY COMMISSION DOCKET UNIT, MS-4	
Attn: Docket No. 01-AFC-12	
1516 Ninth Street	
Sacramento, CA 95814-5512	
* * * *	

In addition to the documents sent to the Commission Docket Unit, also send

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I declare under penalty of perjury that the foregoing is true and correct.

[signature]

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